No. 12718

United States
Court of Appeals
for the Ninth Circuit.

WILLIAM EWALD ANDERSON,

Appellant,

vs.

JOHN P. BOYD, District Director, Immigration and Naturalization Service, for the Seattle District,

Appellee.

Transcript of Record

**Appeal from the United States District Court,
Western District of Washington
Northern Division.**

Phillips & Van Orden Co., 870 Brannan Street, San Francisco, Calif.

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF COUNSEL

EDWARDS E. MERGES,

1510-1511 Smith Tower,
Seattle 4, Washington,

Attorney for Appellant.

J. CHARLES DENNIS, and

JOHN E. BELCHER,

1020 U. S. Court House,
Seattle 4, Washington,

Attorneys for Appellee.

In the District Court of the United States for the Western District of Washington, Northern Division

No. 2083

In the Matter of

The Petition of WILLIAM EWALD ANDERSON, for Writ of Habeas Corpus.

AMENDED PETITION FOR WRIT OF HABEAS CORPUS

Comes now William Ewald Anderson, and petitions this Court to issue a writ of habeas corpus to inquire into his detention by the Seattle Immigration authorities at the Port of Seattle, and shows the Court as follows:

I.

That this petitioner was born in the United States on August 16, 1902, and some time thereafter went to Canada to live. That in 1926 he became a naturalized Canadian citizen. Then in 1935 he resumed his residence in the United States, and in 1938 went to Canada in connection with his business as an official of the International Woodworkers of America. Then on January 3, 1939, he applied for readmission to the United States and was excluded by the Immigration Service at the Port of Blaine, Washington. That thereafter petitioner applied for an Immigration visa to the American Consul at Vancouver, British Columbia, and on August 8, 1939, an Immigration visa was issued to him. That

thereafter petitioner again applied for readmission to the United States, and was again excluded, and that an appeal was taken from such exclusion decision. That on January 3, 1940, petitioner reentered the United States through the Port of Blaine, Washington, and upon arrival in the United States reported to the Immigration authorities. That thereafter a warrant of deportation was issued on January 22, 1940, which said warrant charged that the petitioner entered the United States without permission and within one year following his exclusion and deportation. The Immigration authorities then found that petitioner was subject to deportation, and recommended his deportation to Canada.

II.

That thereafter petitioner remained in the United States and the Immigration authorities again considered his case on September 18, 1942, wherein petitioner applied for discretionary relief under Section 19(c) of the Act of 1917 as amended by the Alien Registration Act of 1940. That at the conclusion of said hearing the Presiding Inspector again recommended that petitioner be deported. That thereafter an appeal was taken before the Board of Immigration Appeals on such order of deportation, and said appeal was dismissed, and petitioner is now being held in custody by said Immigration authorities for deportation at Seattle.

III.

That your petitioner is not being held nor being

ordered deported under or by virtue of any judgment, decree, final order or process except by order of the Immigration authorities, as aforesaid.

IV.

That at the hearings held by the Immigration authorities the foregoing facts detailed herein affirmatively appeared, and it further appeared that petitioner was not a member of the Communist Party nor was he likely to become a public charge. That it further appeared affirmatively from the records and files herein that the hearings were not conducted in accordance with the law as applied to such matters, and that in ordering petitioner deported the Immigration officials have abused their discretion. That their finding that petitioner is a Communist or member of the Communist Party is not based upon reasonable evidence or fact, and that testimony and exhibits at said hearings corroborate the fact that petitioner is American born, is not a member of the Communist Party, and that under the rules of evidence as set forth in the Rules of Evidence in the United States Courts in such cases there is no substantial evidence to the contrary, and that under the laws of the United States and the decisions of the Courts of the United States said order of deportation is made after an improper and unlawful hearing, and the alleged ground that the petitioner is a Communist is based upon suspicion and conjecture, and that the Immigration officers in ordering your petitioner deported have abused their discretion, and your petitioner has not

had a fair trial, and is, therefore, entitled to have an order to show cause issued herein requiring the District Director to appear and show cause why the prayer of petitioner's order to show cause should not be granted.

Wherefore, your petitioner prays that an order to show cause be issued out of this court ordering and directing said District Director to appear and show cause, if any he may have, in this court on the .... day of ....., 1948, at the hour of ..m., why a writ of habeas corpus should not be issued as prayed for herein; and your petitioner further prayers that a writ be issued directing said District Director to have your petitioner appear before this court in the United States District Court for the Western District of Washington, Northern Division, at the Federal Building in Seattle, Washington, and at such time as in said writ may be named to do and receive what shall then and there be considered concerning your petitioner, together with the time and cause of his detention.

/s/ WILLIAM EWALD ANDERSON,
Petitioner.

State of Washington,
County of King—ss.

William Ewald Anderson, being first duly sworn on his oath deposes and says: That he is the petitioner herein; that he has read the foregoing petition, knows the contents thereof and believes same to be true.

/s/ WILLIAM EWALD ANDERSON.

Subscribed and Sworn to before me this 2nd day of September, 1948.

[Seal] /s/ EDWARDS MERGES,
Notary Public in and for the State of Washington,
Residing at Seattle.

[Endorsed]: Filed September 7, 1948.

[Title of District Court and Cause.]

ORDER TO SHOW CAUSE

On reading the petition on file herein wherein and whereby William Ewald Anderson petitions this Court to issue a writ of habeas corpus to inquire into his detention by the Seattle Immigration authorities at the Port of Seattle; now, therefore

It Is by This Court Ordered, Adjudged and Decreed that the said District Director of Immigration be ordered to show cause in the courtroom of this Court in the United States Court House in Seattle, Washington, on the 1st day of October, 1948, at the hour of 1:30 p.m. on said date, why said writ should not issue.

It Is Further Ordered that, pending this petition, petitioner shall deposit with the said District Director such sum or sums, if any, as may be required by said District Director for petitioner's maintenance at the Immigration Station.

Done in Open Court this 7th day of September, 1948.

/s/ LLOYD L. BLACK,
Judge.

Presented by:

/s/ EDWARDS MERGES,
Attorney for Petitioner.

[Endorsed]: Filed September 7, 1948.

[Title of District Court and Cause.]

ANSWER TO ORDER TO SHOW CAUSE

Comes now R. P. Bonham, Respondent, above named, and for answer to the petition herein, respectfully shows to the Court:

I.

Answering Paragraph I of the petition, respondent admits the petitioner was born in the United States on August 16, 1902, and some time thereafter went to Canada to live. The respondent also admits that the petitioner became naturalized as a Canadian citizen. The respondent further admits that the petitioner entered the United States in 1935 and that he went to Canada in connection with his business as an official of the International Woodworkers of America in 1938. The respondent admits that on January 3, 1939, the petitioner applied for readmission to the United States and was excluded by the Immigration Service at the port of Blaine, Washington. The respondent further admits that thereafter petitioner applied for an immigration visa to the American Consul at Vancouver, British Columbia, and that on August 8, 1939, an immigra-

tion visa was issued to him. The respondent also admits that thereafter the petitioner again applied for readmission to the United States, and was again excluded, and that an appeal was taken from such exclusion decision. The respondent admits that the petitioner reentered the United States on January 3, 1940, at or near Blaine, Washington, and avers that the petitioner evaded inspection by officers of the Immigration and Naturalization Service and that he surrendered himself to the Immigration authorities in Aberdeen, Washington. The respondent avers that thereafter a warrant of arrest was issued on January 22, 1940, which said warrant charged that the petitioner entered the United States without permission and within one year following his exclusion and deportation. The respondent admits that the Immigration authorities then found that petitioner was subject to deportation, and recommended his deportation to Canada.

II.

Answering Paragraph II of the petition, respondent admits that thereafter the petitioner remained in the United States, and the Immigration authorities again considered his case on September 18, 1942, wherein petitioner applied for discretionary relief under Section 19(c) of the Act of 1917 as amended by the Alien Registration Act of 1940. The respondent also admits that at the conclusion of said hearing the Presiding Inspector again recommended that petitioner be deported. The respondent further admits that thereafter an appeal

was taken before the Board of Immigration Appeals on such order of deportation, and said appeal was dismissed.

III.

Answering Paragraph III of the petition, the respondent admits that the petitioner is not being held nor being ordered deported under or by virtue of any judgment, decree, final order or process except by order of the Immigration authorities, as aforesaid.

IV.

Answering Paragraph IV of the petition, the respondent avers that at the hearings held by the Immigration authorities the foregoing facts detailed herein affirmatively appeared and that it further appeared that the petitioner was a member of the Communist Party. The respondent avers that it further appeared affirmatively from the records and files herein that the hearings were conducted in accordance with the law as applied to such matters and that in ordering the petitioner deported the Immigration officials have not abused their discretion. The respondent further avers that the finding of the Immigration authorities that the petitioner was a Communist or a member of the Communist Party is based upon reasonable evidence or fact, and that the testimony and exhibits at said hearing corroborate the fact that the petitioner was a member of the Communist Party, and that under the rules of evidence as set forth in the Rules of Evidence in the United States Courts in such cases

there is substantial evidence in support thereof. The respondent admits that the petitioner is American-born and avers that under the laws of the United States and the decisions of the Courts of the United States said order of deportation is made after a proper and lawful hearing and that the ground that the petitioner was a Communist is not based upon suspicion and conjecture, and that the Immigration officers in ordering your petitioner deported have not abused their discretion, and that the petitioner has had a fair trial.

And for Answer to the Order to Show Cause, Respondent Respectfully Represents and Shows to This Honorable Court:

I.

That he is holding the petitioner for deportation to Canada, the country of his citizenship and the country from which he entered the United States on the 3rd of January, 1940, pursuant to a warrant of arrest issued by Turner W. Battle, Assistant Secretary of Labor on the 22nd of January, 1940, charging that the petitioner who entered this country at Blaine, Washington, on the 3rd day of January, 1940, has been found in the United States in violation of the immigration laws thereof and is subject to be taken into custody and deported subject to the following provisions of law, and for the following reasons: The Immigration Act of 1917, in that he entered without inspection; and the said Act as amended by the Act of March 4, 1929, in that he entered the United States within one

year from the date of exclusion and deportation, consent to reapply for admission not having been granted.

II.

That said warrant was served on the petitioner on the 19th of February, 1940, and that petitioner was afforded a hearing thereunder to show cause why he should not be deported from the United States. Petitioner was represented by counsel of his own selection and at his own expense.

III.

That under the record, and in accordance with the provisions of law, the petitioner is subject to deportation.

IV.

That on the 5th of January, 1948, A. R. Mackey, Chief, Exclusion and Expulsion Section, Immigration and Naturalization Service, by virtue of the power and authority vested in the Attorney General under the laws of the United States and by his direction, issued a warrant of deportation commanding that petitioner be deported to Canada on the following charges: The Immigration Act of 1917, in that he entered without inspection; the Act of February 5, 1917, as amended, in that he entered the United States within one year from the date of exclusion and deportation, consent to reapply for admission not having been granted by the proper authority; the Immigration Act of May 26, 1924, in that, at the time of entry he was an immigrant not in possession of a valid immigration visa and

not exempted from the presentation thereof by said Act or regulations made thereunder; and the Act of October 16, 1918, as amended, in that he returned to or reentered the United States, after having been excluded and deported, or arrested and deported in pursuance of the provisions of said Act, which relates to anarchists and similar classes.

V.

The certified record of the Department of Justice relating to the deportation proceedings against the said petitioner, the original warrant of arrest and the original warrant of deportation, are attached hereto and made a part and parcel of this return, as fully and completely as though set forth in detail.

Wherefore Respondent prays that the rule to show cause be dismissed, and the petition for the writ be denied.

/s/ R. P. BONHAM,
District Director, Immigration and Naturalization Service for the Seattle District.

/s/ J. CHARLES DENNIS,
United States Attorney.

/s/ JOHN E. BELCHER,
Assistant U. S. Attorney,
Attorneys for Respondent.

United States of America,
State of Washington,
County of King—ss.

R. P. Bonham, being first duly sworn, on oath deposes and says: That he is the respondent in the above-entitled action; that he has read the foregoing answer to the petition and order to show cause herein, knows the contents thereof and that the same is true as he verily believes.

/s/ R. P. BONHAM.

Subscribed and sworn to before me this 22nd day of September, 1948.

/s/ MILDRED GRANGER,
Notary Public in and for the State of Washington,
Residing at Seattle.

[Endorsed]: Filed October 1, 1948.

[Title of District Court and Cause.]

ORDER

This matter having come on regularly for hearing before the Court upon the motion of the petitioner duly made in open court for the substitution of John P. Boyd for R. P. Bonham, as District Director of Immigration of the United States for the Western District of Washington; and it appearing to the Court that good cause exists therefor, now,

It Is Hereby Ordered that John P. Boyd be substituted for R. P. Bonham as respondent herein.

Done in Open Court this 21st day of July, 1949, as of July 19, 1949.

/s/ LLOYD L. BLACK,
Judge.

Presented by:

/s/ EDWARDS MERGES,
Counsel for Petitioner.

Approved:

/s/ JOHN E. BELCHER,
Asst. U. S. Attorney.

[Endorsed]: Filed July 21, 1949.

[Title of District Court and Cause.]

MOTION FOR ORDER GRANTING WRIT OF HABEAS CORPUS NOTWITHSTANDING THE ORAL DECISION OF THE COURT

Comes Now the petitioner, William Ewald Anderson, and respectfully moves the court for a reconsideration of the entire record of the case herein and for an order and decree, granting Writ of Habeas Corpus as prayed for herein notwithstanding the oral decision of the court.

This motion is based upon the records and files herein and upon the affidavit of Edwards E. Merges, attorney for the petitioner.

/s/ EDWARDS MERGES.

State of Washington,
County of King—ss.

AFFIDAVIT

Edwards E. Merges, being first duly sworn, on oath deposes and says: That he is the attorney for the petitioner herein, and that the records and files in this case show that the Board of Immigration Appeals did not render final decision in this case until on or about the 5th day of January, 1948, and that thereafter and on March 12, 1948, the petitioner made application for a Stay of Deportation and thereafter on May 7, 1948, the petitioner requested a reopening of the proceedings in this case to permit him to present additional evidence, and that said petitions for reopening and said decision in this case was not rendered under or in conformance with the Administrative Procedures Act of June 11, 1946, and that said Administrative Procedures Act was in full force and effect during the time that the above-entitled cause was under consideration by the Board of Immigration Appeals and was not considered or adjudicated in accordance with said Act by the Board of Immigration Appeals, and that other proceedings were had as shown by the records and files herein in this case subsequent to the passage and going into effect of said Administrative Procedures Act. That in the case of Wong Yang Sung v. McGrath, Vol. 70, 8, 445 Supreme Court Reporter Advance Sheets, the Supreme Court of the United States has recently held the Administrative Procedures Act to be ap-

plicable to deportation hearings, and that accordingly, the hearing herein is invalid and void, but that said Wong Yang Sun decision had not been made nor was known to the court at the time of the oral opinion in the above-entitled case, but that by reason of the said Wong Yang Sung decision, the petitioner herein is entitled, in the opinion of affiant, to issuance of a Writ of Habeas Corpus and affiant respectfully asks the court to reconsider this case and the records and files herein in light of the Wong Yang Sung case, supra.

/s/ EDWARDS MERGES.

Subscribed and sworn to before me this 16th day of March, 1950.

/s/ ARTHUR G. DUNN, JR.,
Notary Public in and for the State of Washington,
Residing at Seattle.

Receipt of copy acknowledged.

[Endorsed]: Filed March 17, 1950.

United States District Court, Western District of Washington, Northern Division

No. 2083

In the Matter of

The Petition of WILLIAM EWALD ANDERSON for a Writ of Habeas Corpus

June 22, 1950

COURT'S ORAL DECISION

Black, Judge:

The court heretofore on November 4, 1949, after careful consideration of all the records, exhibits, evidence and issues involved, announced that the petition for a writ of habeas corpus was denied, at which time counsel were advised that later some of the reasons which appealed to the court as supporting such decision would be stated. On December 14, 1949, in pursuance of such advice of November 4, 1949, the court rendered its oral opinion.

After findings of fact, conclusions of law and decree were presented for entry and while the court was considering certain proposed changes as to the findings of fact, the petitioner on March 17, 1950, and after the decision of February 20, 1950, of the United States Supreme Court in Wong Yang Sung v. McGrath, 339 U.S. 33, filed a motion asking the court for a reconsideration of the entire record and for the granting of the writ of habeas corpus

notwithstanding such oral decision of the court. Respective counsel were accorded full opportunity to and did argue every phase of the entire matter from the inception as they desired.

While counsel for petitioner in connection with such motion filed March 17, 1950, strongly insisted that the Administrative Procedure Act of June 11, 1946, 5 U.S.C.A. § 1001, et seq., had not been complied with as to petitioner and urged that under such Act petitioner was entitled to the writ prayed for it should be noted that never prior to March 17, 1950, had petitioner or counsel for petitioner in any way argued or even indicated that said Act was in the slightest degree or at all applicable to the proceedings involving him.

This court notwithstanding the lateness of petitioner's suggestion again carefully examined the entire record, files, exhibits and evidence with respect to whether or not the Administrative Procedure Act related thereto in whole, as claimed by petitioner, or at all.

After such careful consideration and reexamination of every aspect of the matter the court is still of the opinion that the previously announced denial was correct.

Petitioner since such tardy suggestion has argued that all the many hearings held between 1939 and 1945 before the Administrative Procedure Act was ever enacted, as well as long before any effective date of that Act, which as to appointment of Examiner was June 11, 1947, Section 1011, should be set aside because not in compliance with an Act that did not then exist.

Plainly the Act does not apply to the hearings had before its enactment. No hearings were had after it was passed. And it does not appear that the petitioner would have had any rights under the Act as to anything since its enactment that he was not afforded. But even if he would have been entitled to some technical right under the Act after its enactment had he or his counsel timely asked the Immigration authorities for such, he should not now be able to successfully complain.

To approve the position of counsel for petitioner beginning in March, 1950, would establish a precedent hazardous in the extreme.

This Administrative Procedure Act because of the subsequent time of its enactment, because of the subsequent effective date therein stated, and because of the specific language of the Act, did not apply to the proceedings before the Immigration authorities as to this petitioner. Aside from that petitioner, represented all the while by experienced counsel, waived any right to object to the procedure followed.

I can find no basis, either legally or equitably, for the issuance of the writ of habeas corpus sought. Every suggested sentimental ground for granting relief to him is based upon an occurrence happening after the Immigration authorities had declared their opposition to his reentry into the United States and would be a solicitation to others to insincerely copy his course as a helpful strategy.

For the reasons, among others, orally stated by me on December 14, 1949, I am satisfied and find

that the Immigration authorities were acting within the scope of their powers, that they were either arbitrary or capricious nor acting in abuse of their discretion, and that the evidence presented to them was ample to justify the conclusions they reached.

Moreover, based on the record and under the law, I am further satisfied and further find that their actions, findings and conclusions were not contrary to the law or the Constitution; that they were supported by substantial evidence and moreover were supported by the facts to the extent that the facts were or are subject to trial de novo by any reviewing court. And finally I find that there was no prejudicial error. If there were any error on the part of the Immigration authorities such favored petitioner and in no wise constituted prejudicial error. It must be remembered that he wilfully and unlawfully entered the United States early in 1940 and that he is still here and at liberty in spite of the efforts of the Immigration authorities to return him to the country from whence he unlawfully came so many years ago.

His conviction for wilful illegal entry established beyond all reasonable doubt that his entry then was wilful and illegal.

Such is res judicata between the government and the petitioner. Having come to this country wilfully and unlawfully over ten years ago he has therefore never since had a lawful right to remain here. I have no legal or conscientious ground to interfere with the decision of the Immigration authorities that he should be deported.

Neither the recent Supreme Court decision of Wong Yang Sung v. McGrath, 339 U.S. 33, supra, and 339 U.S. 908 per curiam modification, nor the per curiam decision of April 24, 1950, in the cause of Yanish, et al., v. Barber, etc. (9 Cir.), 181 F. 2d 492, apply to petitioner's situation under the record here involved.

The distinctions between them and the instant case are definite and clear. In each of them, contrasted with the situation here, the hearings before the Immigration authorities in question were long after the effective date of the Administrative Procedure Act. In each of them, contrasted with the situation here, the one sought to be deported made timely and appropriate demand for compliance with the Act. See Wong Yang Sung cases, 80 F. Supp. 235 and 174 F. 2d 158, and Judge Harris' opinion in the Yanish case, 81 F. Supp. 499, and 86 F. Supp. 461 (Yanish case—Judge Erskine) for matters preceding the decision of Judge Harris. And in each of them, contrasted with the situation here, there was apparently lawful entry.

Such motion is overruled and such petition of William Ewald Anderson is, of course, again denied.

The foregoing transcript of oral opinion herein of June 22, 1950, is approved.

June 23, 1950.

/s/ LLOYD L. BLACK,
U. S. District Judge.

[Endorsed]: Filed June 23, 1950.

[Title of District Court and Cause.]

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter having heretofore come before the undersigned Judge of the above-entitled Court, sitting without a jury, upon the Amended Petition of William Ewald Anderson for a Writ of Habeas Corpus, upon an order to show cause directed to the District Director of Immigration (R. P. Bonham, now retired, and John P. Boyd having subsequently been duly and regularly substituted by appropriate order) and the petitioner having appeared in person and having been represented by his attorney, Edwards E. Merges, and the respondent Director of Immigration having been represented by J. Charles Dennis, United States Attorney, and John E. Belcher, Assistant United States Attorney, and each party having introduced evidence and submitted briefs, and the matter having been argued at length, and the Court having taken the same under advisement, and having by oral decision denied the petitioner's petition for a Writ of Habeas Corpus, and thereafter Findings of Fact and Conclusions of Law having been presented for entry, and the Court having taken the signing of said Findings of Fact and Conclusions of Law under consideration for certain proposed changes, and while said Findings of Fact and Conclusions of Law were under consideration, the petitioner having, on March 17, 1950, after the decision of

February 20, 1950, of the United States Supreme Court in the case of Wong Yang Sung v. McGrath, 339 U.S. 33, filed a motion asking the Court for a reconsideration of the entire record and for the granting of the Writ of Habeas Corpus, notwithstanding such oral decision of the Court, and respective counsel having been thereupon accorded a full opportunity to argue the entire matter again and such argument having been had, and the Court having again considered the entire record, and again rendered an oral decision on June 22, 1950, denying the Writ of Habeas Corpus as prayed for, does now make and enter the following:

Findings of Fact

I.

That the petitioner was born in Grand Marais County, Michigan, on August 16, 1902, and lived with his parents in the State of Montana until 1915, at which time his mother and father separated and he accompanied his mother to British Columbia where he lived until 1920. That in 1920 he returned to the United States, and lived with his father until 1922, when he again returned to Canada and remained until 1935. That while in Canada in 1926 he took out naturalization papers as a Canadian citizen in British Columbia in order to engage in fishing in Canadian waters. That he was married to his first wife, a Canadian, in Vancouver, B. C., on August 28, 1923, and was divorced from her on March 31, 1939.

II.

That in 1935 the petitioner returned to the State of Washington and went to live in the city of Aberdeen. That from the time of his arrival in 1935 until 1937, he was employed by the Wilson Brothers Lumber Mills, and in August of 1937, he became Secretary-Treasurer of District Council No. 3 of the International Woodworkers of America, located in Aberdeen.

III.

That petitioner continued as Secretary-Treasurer of the Union in Aberdeen until December of 1938 when he became a delegate to represent his district at the Union at a convention session in British Columbia. That he went to British Columbia as a delegate to said convention, and on January 2, 1939, at the conclusion of the convention started back to the United States on a bus from Vancouver, British Columbia. That he was detained at the border by Immigration Officers and was given a hearing before a Board of Special Inquiry at Blaine, Washington. That the Board of Special Inquiry excluded the petitioner from the United States on the ground that he was an immigrant, not in possession of an unexpired Immigration visa, and he was a person likely to become a public charge, and that he was one who had admitted committing a crime involving moral turpitude, to wit, adultery. That this ruling of the Board of Special Inquiry was appealed to the Board of Review in Washington, D. C., during which time the petitioner remained in Canada. That on March 11, 1939, the Board

of Review in Washington, D. C., sustained the excluding decision, upon the ground that petitioner was not in possession of an Immigration Visa, but that the charge of moral turpitude and the charge that he was a person likely to become a public charge was dismissed. That when the petitioner was advised of the decision of the Board of Review he made formal application at the office of the American Consul General in Vancouver, British Columbia, for the issuance of a permanent visa and that hearings were had and petitioner was issued a permanent visa by the Consul on August 8, 1939. He had in the meantime and on July 19, 1939, married his present and second wife, a native born citizen of the United States and the mother of two children.

IV.

That on August 9, 1939, petitioner began to board the train at Vancouver, British Columbia, for the purpose of coming to the United States but was intercepted at the train by Immigration officers and brought before a Board of Special Inquiry at Vancouver, British Columbia. That further hearings were held by the Board of Special Inquiry which lasted for a period of approximately thirty days, or until September 8, 1939, at the conclusion of which hearings the petitioner was excluded from admission to the United States on the ground that he was a member of the Communist party. That petitioner noted an appeal from the excluding decision, and while the appeal was pending he entered the United States on January 3, 1940, wilfully and

unlawfully and without inspection by the Immigration authorities. That petitioner went immediately upon entering the United States, to his home in Aberdeen, Washington, and surrendered himself to the Immigration officers there for inspection. That thereafter and on the 14th day of March, 1942, petitioner was tried and convicted by a jury in the Federal District Court for the Western District of Washington of illegally entering the United States and was sentenced to 11 months, and ordered to pay a fine of $500.00. That petitioner then served 9 months at the Federal Road Camp at DuPont, Fort Lewis, Washington, and was discharged.

V.

During the time petitioner was confined in the road camp the Board of Immigration Appeals rendered its opinion on the appeal from the Board of Special Inquiry's order, dated September 18, 1942. That the Board of Immigration Appeals held that the petitioner had entered the United States unlawfully, but gave him permission, in its ruling, to apply for suspension of his deportation. That petitioner thereupon filed his petition for suspension of deportation and after his release from the road camp further hearings were had covering the years 1943, 1944, and during which time the petitioner lived in Seattle with his second wife and adopted sons, working on the Seattle waterfront as a marine rigger.

VI.

That on July 25, 1944, the Seattle Immigration

Inspector Gates made "Findings of Fact and Conclusions of Law" proposing that petitioner's application for suspension of deportation be denied, and that Inspector Gates reaffirmed his opinion on May 9, 1945, and on August 24, 1945, the matter was argued before the Board of Immigration Appeals in Washington, D. C. That on the 5th day of January, 1948, A. R. Mackay, Chief, Exclusion and Expulsion Section, Immigration and Naturalization Service, issued a warrant of deportation commanding that petitioner be deported to Canada on the charges and on the grounds set forth in the order of the Board of Immigration Appeals, and that thereafter and on March 12, 1948, petitioner, through his present counsel, made application for stay of deportation on the ground of the petitioner's physical condition was such as would result in the impairment of his health, which application was denied. That thereafter and on May 7, 1948, petitioner requested a reopening of the proceedings to permit petitioner to present additional evidence showing that petitioner had adopted the two minor children of his wife and that his deportation would result in serious economic detriment to them, which application was denied by the Board of Immigration Appeals June 9, 1948.

VII.

That from an examination of all of the evidence and exhibits introduced the Immigration authorities were acting wholly within the scope of their powers, were neither arbitrary nor capricious and that the

evidence before the Immigration authorities was ample and supported by substantial evidence to justify the conclusions reached.

VIII.

That petitioner did not argue the applicability of this "Administrative Procedure Act" at any time before the Immigration Service nor the Department of Justice, and that no hearings were had before Immigration tribunals subsequent to the passage of the "Administrative Procedures Act."

IX.

That the Immigration authorities committed no prejudicial error.

X.

The petitioner having wilfully and unlawfully entered the United States early in 1940 has never since had a lawful right to remain here.

Done in Open Court this 27th day of July, 1950.

/s/ LLOYD L. BLACK,
U. S. District Judge.

From the foregoing Findings of Fact, the Court makes and enters the following:

Conclusions of Law

I.

That the petitioner is not entitled to the relief prayed for and that the application should be denied and the cause dismissed.

II.

That the "Administrative Procedures Act" does not apply to hearings before Immigration tribunals had before its enactment.

III.

That by reason of the fact that petitioner did not ask for any technical right or relief under the "Administrative Procedures Act" after its passage, he is not now in a position to urge the applicability of the Act to his appeal before the Board of Immigration Appeals and under the facts in this case, the "Administrative Procedures Act" does not apply to the petitioner's administrative appeal from proceedings had before passage of the Act.

IV.

The petitioner's conviction for wilful illegal entry is res judicata between the government and the petitioner.

V.

Having come to this country wilfully and unlawfully over ten years ago he has never since had a lawful right to remain here.

Done in Open Court this 27th day of July, 1950.

/s/ LLOYD L. BLACK,
U. S. District Judge.

Presented by:
/s/ JOHN E. BELCHER,
Asst. U. S. Attorney.

Approved as to form:

/s/ EDWARDS MERGES,
Attorney for Petitioner.

[Endorsed]: Filed July 27, 1950.

United States District Court, Western District of Washington, Northern Division

No. 2083

In the Matter of

WILLIAM EWALD ANDERSON for a Writ of Habeas Corpus

JUDGMENT

This matter having heretofore come before the undersigned Judge of the above-entitled Court, sitting without a jury, upon the Amended Petition of William Ewald Anderson for a Writ of Habeas Corpus, upon an order to show cause directed to the District Director of Immigration (R. P. Bonham, now retired, and John P. Boyd, having subsequently been duly and regularly substituted by appropriate order) and the petitioner having appeared in person and having been represented by his attorney, Edwards E. Merges, and the respondent Director of Immigration having been represented by J. Charles Dennis, United States Attorney, and John E. Belcher, Assistant United States Attorney, and each party having introduced evidence

and submitted briefs, and the matter having been argued at length, and the Court having taken the same under advisement, and having by oral decision denied the petitioner's petition for a Writ of Habeas Corpus, and thereafter Findings of Fact and Conclusions of Law having been presented for entry, and the Court having taken the signing of said Findings of Fact and Conclusions of Law under consideration for certain proposed changes, and while said Findings of Fact and Conclusions of Law were under consideration, the petitioner having, on March 17, 1950, after the decision of February 20, 1950, of the United States Supreme Court in the case of Wong Yang Sung v. McGrath, 339 U.S. 33, filed a motion asking the Court for a reconsideration of the entire record and for the granting of a Writ of Habeas Corpus, notwithstanding such oral decision of the Court, and respective counsel having been thereupon accorded a full opportunity to argue the entire matter again and such argument having been had, and the Court having again considered the entire record, and again rendered an oral decision on June 22, 1950, denying the Writ of Habeas Corpus as prayed for, and the Court having taken said matter under advisement and having heretofore rendered its oral opinion in the matter, and having made and entered its Findings of Fact and Conclusions of Law in writing, Now, therefore,

It Is Ordered, Adjudged and Decreed that the application for a Writ of Habeas Corpus herein be and the same is hereby denied, and the rule to

show cause heretofore issued herein be and the same is hereby discharged, to all of which petitioner excepts and exceptions are allowed.

Done in Open Court this 27th day of July, 1950.

/s/ LLOYD L. BLACK,
U. S. District Judge.

Presented by:

/s/ JOHN E. BELCHER,
Asst. United States Attorney.

Approved as to form and Presentation waived:

/s/ EDWARDS MERGES,
Attorney for Petitioner.

(Entered in Civil Docket July 28, 1950.)

[Endorsed]: Filed July 27, 1950.

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice Is Hereby Given that the petitioner, William Ewald Anderson, hereby appeals to the United States Court of Appeals for the Ninth Circuit from the final judgment entered herein on the 27th day of July, 1950, and from the Conclusions of Law therein made as particularly specified by the appellant's statement of points on appeal and from each and every other oral decision and ruling made by the

District Court during the trial and pendency of the above-entitled cause.

Dated this 15th day of September, 1950.

/s/ EDWARDS MERGES,
Attorney for Appellant.

Service accepted this 18th day of September, 1950.

/s/ JOHN E. BELCHER,
Asst. United States Attorney.

[Endorsed]: Filed September 18, 1950.

[Title of District Court and Cause.]

COSTS ON APPEAL BOND

Know All Men by These Presents:

That William E. Anderson, as Principal, and General Casualty Company of America, as Surety, are held and firmly bound unto the United States of America, in the penal sum of Two Hundred Fifty ($250.00) Dollars, lawful money of the United States for the payment thereof to the benefit of whom it may concern, the said principal and the said surety bind themselves, their successors and assigns, jointly and severally, firmly by these presents.

Sealed with our seals and dated this 15th day of September, 1950.

The condition of this obligation is such that, Whereas, the above bounden principal is filing in the above entitled and numbered cause an appeal on a

writ of habeas corpus, now, therefore, if the above bounden principal shall pay all costs if the appeal is dismissed or if the judgment is affirmed or all such costs as the appellant court may award if the judgment is modified, then this obligation to be void, otherwise to remain in full force and effect.

/s/ WM. E. ANDERSON,
General Casualty Company of America,

[Seal] By EDW. O. FEEK,
Attorney-in-fact.

[Endorsed]: Filed September 18, 1950.

[Title of District Court and Cause.]

PETITIONER'S STATEMENT OF POINTS ON APPEAL

The District Court Erred In:

1. In making its oral decision on November 4, 1949, denying the petitioner's petition for Writ of Habeas Corpus.

2. In reaffirming such oral decision of November 4, 1949, by subsequent oral decision on December 14, 1949.

3. In making its oral decisions of November 4, 1949, and December 14, 1949, without granting counsel for the petitioner an opportunity to present oral argument.

4. In making its oral decision of June 22, 1940, denying the petitioner's motion for reconsideration and reaffirming its prior oral decisions of November 4, 1949, and December 14, 1949.

5. In holding that compliance with the Administrative Procedures Act of June 11, 1946, by the Immigration Authorities, with regard to proceedings taken by them in a petitioner's case after its enactment was and is not required under the holding of the Supreme Court of the United States in the case of Wong Yang Sung v. McGrath, 339 U.S. 33.

6. In holding that the Immigration Authorities did not abuse their discretion in ordering the petitioner deported and that their decision in so ordering him deported was supported by substantial evidence.

7. In holding that the Court's scope of review in deportation cases was not broadened by the Wong Yang Sung case supra.

8. In holding that the decision of the Circuit Court of Appeals for the Ninth Circuit in the case of Yanish, et al. v. Barber, etc. (9 Cir.) 181 F. 2d 492, was not applicable to the instant case.

9. In making and entering paragraphs I to III, inclusive, of its Conclusions of Law.

10. In making and entering its Judgment herein, denying the petitioner's application for Writ of Habeas Corpus as prayed for and in discharging the petitioner's rule to show cause on July 27, 1950.

Dated this 15th day of September, 1950.

/s/ EDWARDS MERGES,
Attorney for Petitioner.

Service accepted this 18th day of September, 1950.

/s/ JOHN E. BELCHER,
Asst. United States Attorney.

[Endorsed]: Filed September 18, 1950.

[Title of District Court and Cause.]

DESIGNATION OF RECORD

To the Clerk of the Above-Entitled Court:

Please transmit to the Clerk of the Court of Appeals for the Ninth Circuit the entire record of proceedings, together with a Transcript of the testimony and proceedings in the above-entitled cause and all exhibits in connection therewith.

Dated at Seattle, Washington, this 15th day of September, 1950.

/s/ EDWARDS MERGES,
Attorney for Appellant.

Service accepted this 18th day of September, 1950.

/s/ JOHN E. BELCHER,
Asst. United States Attorney.

[Endorsed]: Filed September 18, 1950.

[Title of District Court and Cause.]

STIPULATION AND ORDER TRANSFERRING EXHIBITS

It Is Hereby Agreed and Stipulated by and between the parties herein through their respective counsel of record, as follows, to-wit:

That the petitioner has filed herein a Notice of Appeal from the judgment of the above-entitled court entered on the 27th day of July, 1950, and has designated the complete record on appeal and that it is necessary to complete the record that the original exhibits introduced by the parties be, by Order of this Court, transferred with the transcript on appeal to the United States Circuit Court of Appeals for the Ninth Circuit.

Accordingly, It Is Agreed and Stipulated between the parties that the attached Order directing that said original exhibits be transferred by the Clerk of this Court to the United States Circuit Court of Appeals for the Ninth Circuit be entered forthwith and without notice.

Dated at Seattle, Washington, this 18th day of September, 1950.

/s/ EDWARDS MERGES,
Attorney for Petitioner.

/s/ JOHN E. BELCHER,
Asst. United States Attorney.

[Endorsed]: Filed September 18, 1950.

[Title of District Court and Cause.]

ORDER

Pursuant to the attached Stipulation, It Is Ordered that all original exhibits introduced by either of the parties, or both, be transferred by the Clerk of this Court to the United States Court of Appeals for the Ninth Circuit as a part of the transcript on appeal.

Done in Open Court this 15th day of September, 1950.

/s/ PEIRSON M. HALL,
United States District Judge.

Presented by:

/s/ JOHN E. BELCHER,
Asst. United States Attorney.

Approved as to form and entry and Notice of Presentation waived.

/s/ EDWARDS MERGES,
Attorney for Petitioner.

[Endorsed]: Filed September 18, 1950.

In the District Court of the United States for the Western District of Washington Northern Division

No. 2083

In the Matter of

The Petition of WILLIAM EWALD ANDERSON for Writ of Habeas Corpus

July 19, 1949

Black, J.

Appearances:

EDWARDS E. MERGES,
Attorney-at-Law, for and on Behalf of Petitioner.

JOHN E. BELCHER,
Assistant United States Attorney, for and on Behalf of Respondent.

STENOGRAPHIC TRANSCRIPT OF PROCEEDINGS

The Court: In the Matter of William Ewald Anderson, Petitioner, versus R. P. Bonham, District Director, Immigration and Naturalization Service, Respondent, are the parties ready?

Mr. Merges: Your Honor, I came straight here this morning from my home and very carelessly neglected to bring a written stipulation to change the name of R. P. Bonham to John P. Boyd as District Director.

However, I would like to move at this time to make that change, and a minute entry may be made, and I will present a written order later today.

The Court: Will you do it today?

Mr. Merges: Yes.

The Court: Is it satisfactory?

Mr. Belcher: Yes, your Honor. [2*]

The Court: The motion for substitution is granted with written order to be presented today. Is Mr. William Ewald Anderson personally present?

Mr. Merges: Yes. Now, Your Honor, the record covers a period of approximately ten years. It is exceedingly involved, and I feel it would assist the Court a great deal if I could rather briefly go through the history of this case with the witness because it will save the Court a lot of time in digging out the facts.

The Court: You may proceed.

WILLIAM EWALD ANDERSON

Produced as a witness in his own behalf as petitioner, being first duly sworn, testified on oath as follows:

Direct Examination

By Mr. Merges:

Q. State your name to the Court.

A. William Ewald Anderson.

Q. You are the petitioner in this case?

A. I am.

Q. And in what country were you born?

*** Page numbering appearing at foot of page of original Reporter's Transcript of Record.**

(Testimony of William Ewald Anderson.)

A. I was born in the United States, in Grand Marais, Michigan.

Q. How long did you live there? [3]

A. Just about a year, and my folks moved to the State of Montana.

Q. Where did you live in Montana?

A. A little town out of Missoula called Bonner.

Q. How long did you live in Montana?

A. I lived there until 1915.

Q. Until 1915? A. Yes.

Q. At that time what happened between your parents?

A. Well, my father and mother were separated, and my mother was remarried again.

Q. Where did she go to live?

A. They went to Canada.

Q. What part of Canada?

A. Vancouver, B.C.

Q. Where did your father stay?

A. My father stayed in Montana, in Milltown, Montana.

Q. Did you accompany your mother to Canada?

A. Yes, I went and lived with her up there in Vancouver.

Q. And that was in 1915? A. Yes.

Q. You were approximately 12 or 13 at the time?

A. I was 13 years old, yes.

Q. Did you live in the city of Vancouver with your mother?

A. Yes, I lived,—not Vancouver, but we lived in a little [4] town just out of Vancouver.

(Testimony of William Ewald Anderson.)

Q. Had you attended school in this country prior to going to Vancouver?

A. In Milltown, Montana.

Q. What grade of school were you in prior to going to Vancouver?

A. Seventh grade, if I recall correctly.

Q. What did you do in Canada?

A. When I finished school at an early age I went to work, when I was about fourteen or fifteen.

Q. When you finished school. Was that high school or grammar?

A. No, preliminary school.

Q. Is that grammar school? A. Yes.

Q. Did you go to high school? A. No.

Q. How old were you when you finished going to the school that you went to?

A. Oh, I was about fifteen.

Q. About fifteen. And you began working in Canada then?

A. Yes, I worked there for a while.

Q. Where did you work?

A. At this little town outside of Vancouver, B.C.

Q. What kind of work did you do? [5]

A. I worked in a hardware store.

Q. Were you affiliated with any labor organizations at that time?

A. No, none whatsoever.

Q. How long did you work in the hardware store?

A. Well, probably a year and a half, I would say.

Q. Did you return to the United States in 1920?

A. I did, yes.

(Testimony of William Ewald Anderson.)

Q. Why did you return to the United States?

A. My father had moved to Aloha, Washington, and he requested that I come down with him, and I did according to his request.

Q. What did you do when you were in the United States?

A. I worked in a sawmill in Aloha, Washington.

Q. What part of the state is that?

A. In the southwestern part of Washington, south of Hoquiam.

Q. That is down in the Hoquiam-Aberdeen district, is that right?

A. Grays Harbor County.

Q. What did you do in the sawmill?

A. I worked as a tail grader on the green chain.

Q. How long did you work in the sawmill?

A. I worked there, I would say, around six or seven months, and the plant burned down. [6]

Q. What did you do then?

A. We moved to Hoquiam, me and my father. I moved and went to Hoquiam.

Q. Did you live with him alone, or was he remarried? A. He never did remarry.

Q. And you just lived with your father?

A. Yes, that is right.

Q. How long did you live in Hoquiam with your father?

A. We stayed there several months. Then we went back to Milltown, Montana.

Q. By that time you were getting up to almost twenty-one years of age?

A. Yes, I was getting up around there.

(Testimony of William Ewald Anderson.)

Q. Were you affiliated with any organization at that time? A. No, I never was.

Q. No labor unions?

A. No, no unions or anything of the kind.

Q. What did you do, if anything, in 1922 with reference to leaving the United States?

A. I went back to Canada then in 1922.

Q. Why did you go back to Canada?

A. My mother was up there, and I went up to pay a visit to her.

Q. Had you ever in any manner renounced your American citizenship up to that time? **[7]**

A. No, I had not.

Q. What did you do when you returned to Canada in 1922? A. I stayed there until——

Q. 1935? A. 1935, yes.

Q. What did you do from 1922 to 1935?

A. Well, I worked in the logging camps up there, and I worked in the sawmills, and in 1926 I went fishing,—commercial fishing.

Q. Commercial fishing? A. Yes.

Q. Salmon fishing? A. Yes.

Q. Did you go on a troller or gill-netter?

A. I went on a gill-netter.

Q. That was a gill-netter of Canadian registry?

A. Yes, it was a Canadian registered boat.

Q. Where did it go out of?

A. It went out of Malcomb Island.

Q. Malcomb Island? A. Yes.

Q. Now, when you got that job, did you have to do anything with reference to naturalization papers?

(Testimony of William Ewald Anderson.)

A. In order to fish in Canadian waters it was necessary to have Canadian papers. [8]

Q. You could not get a license to fish in Canadian waters unless you were a Canadian?

A. No. I therefore took out Canadian papers.

Q. When did you apply for Canadian papers, to the best of your knowledge?

A. Well, I knew I was going fishing, and I would say probably May, 1926, if I recall correctly.

Q. May, 1926?

A. I think it was around that time.

Q. And do they have preliminary and final papers there, or what is the system, if you know?

A. It is just the final papers. There isn't first and second papers; it is just the final.

Q. And when did you get your final papers?

A. I don't recall the date, but it was not very long. It was probably 60 days after I was in court.

Q. Did you have any other reason for taking out Canadian naturalization papers?

A. No, not at that time.

Q. Were you skilled in any trade so that you could make your living by other means than common labor at that time? A. No, I was not.

Q. What did you do then after you took out your Canadian naturalization papers? Did you continue to reside in [9] Canada?

A. Yes, I stayed there until 1935.

Q. What did you do with reference to earning your living from 1926 to 1935? Would you just give us a brief resume of the work that you did?

(Testimony of William Ewald Anderson.)

A. Yes, I done common labor work. Work was quite scarce at that time, and I done odd jobs of all kinds.

Q. How long did you fish?

A. I just fished that one sockeye season.

Q. What did you do after that?

A. I went to work in a logging camp.

Q. What did you do in the logging camp?

A. I was a loader in a logging camp.

Q. Loader? A. Yes.

Q. Did you work in logging camps from 1927 to 1935?

A. Most of the time was spent in logging camps and in sawmills. I worked in a sawmill quite a long time right in Vancouver.

Q. That has been more or less your trade, I take it? A. Yes, the lumber industry.

Q. What did you do in 1935?

A. Well, I came to the United States in 1935.

Q. Where did you live in the United States?

A. Aberdeen, Washington. [10]

Q. Through what port did you enter the United States from Canada? A. Blaine, Washington.

Q. Did you pass through the Immigration there?

A. Yes.

Q. You were admitted by the Immigration, I take it? A. Yes.

Q. What did you begin to do when you returned to Aberdeen in 1935?

A. I went to work in the lumber industry and sawmills.

(Testimony of William Ewald Anderson.)

Q. Was your father there then?

A. Yes, my father was in Aberdeen.

Q. Did you live with your father in 1935?

A. I lived with my brother for a while, and then me and my father moved in, and we lived together.

Q. By what lumber mill were you employed in 1935? A. Wilson Brothers Lumber Mill.

Q. Were you employed there from 1935?

A. Yes, I was in a store, and I worked in their mill, too, in between.

Q. By that time you were getting up to be approximately 35 years old?

A. I would say that, yes.

Q. And in 1937 did you make any change in your manner of earning a living? [11]

A. Well, I was elected to an office in the union there, the International Woodworkers of America.

Q. The International Woodworkers of America?

A. Yes.

Q. Did you have any other affiliation besides the International Woodworkers of America?

A. Well, we were in the American Federation of Labor at that time, and we just disaffiliated.

Q. You mean by that the International Woodworkers of America was a unit of the American Federation of Labor?

A. Yes, it was called the Federation of Woodworkers, and when we disaffiliated, we changed the name to the International Woodworkers of America.

Q. And as I understand your testimony, in August, 1937, you became an officer of that union?

(Testimony of William Ewald Anderson.)

A. That is correct.

Q. How did you gain your position as an officer of that union?

A. I was working in the mill, and the mill was about 14 miles from Aberdeen. They had monthly meetings, and I was selected as a shop steward in the Wilson Mills there, and from there I was elected to higher office.

Q. Were you a member of any political party or organization [12] at that time?

A. I was not.

Q. Was your only affiliation that affiliation with International Woodworkers of America?

A. That is right.

Q. When you became an officer of that union did you have any particular support from any political organization—— A. No.

Q. —— when you ran for election? A. No.

Q. Approximately how many members were there in the union that elected you?

A. At that time there was between ten and twelve thousand.

Q. Between ten and twelve thousand?

A. Yes.

Q. And that covered a district down in that country, is that right?

A. Yes, that was southwestern Washington.

Q. Will you tell the Court what territory that district included?

A. That covered about ten logging centers in the southwest.

(Testimony of William Ewald Anderson.)

Q. Briefly, what territory?

A. Aberdeen, Raymond, Centralia, Chehalis, Shelton, [13] Hoquiam, Copalis, Ryderwood and Bucoda.

Q. After your election in August, 1937, did you devote your exclusive time to your duties as an officer in the union? A. Exclusively, yes.

Q. You did not engage in any work in the sawmill, I take it, after that?

A. No, I was a paid, full-time officer.

Q. Will you tell the Court briefly what your duties were as an officer in the union?

A. I was elected Secretary-Treasurer, and I had charge of the district finances of the 12 affiliated local unions at that time and a record and a chart of the membership of the entire district composing the 12 local unions; and my duties were to keep in close contact with the 12 locals.

Q. Did that necessitate your traveling around from local to local?

A. Yes, I used to travel approximately 35 to 40,000 miles a year.

Q. Did it necessitate any organizational activity on your part?

A. Yes, definitely, that was one of my responsibilities.

Q. Getting members, you mean?

A. Yes. [14]

Q. Were you affiliated with any organization during the period 1937-1938 other than the International Woodworkers of America? A. No.

(Testimony of William Ewald Anderson.)

Q. How often did you come up for election?

A. Every year; once a year.

Q. Were you reelected the subsequent year?

A. Yes.

Q. Was it necessary for you to attend different meetings in the course of your work? A. Yes.

Q. Why?

A. I had to attend, I would say, on the average of 16 or 17 meetings a week of my different locals and different committee meetings and so forth.

Q. Was there a good deal of political activity in that district at that time? A. Yes, there was.

Q. In December of 1938 did you have occasion to leave Aberdeen? A. Yes, I did.

Q. And, by the way, during this time did you ever conceal your identity in any manner from the Immigration or anybody?

A. No, none whatsoever. [15]

Q. Is your true name William Ewald Anderson?

A. Yes.

Q. Did you ever go under any other name?

A. I had the name of Wyno Ewald Anderson, but I never used that name. I have always been called William, and I eventually had that Wyno stricken by the probate court. I had it changed in probate court to read William Ewald Anderson.

Q. Why did you have it stricken? Because there was some implication concerning the war?

A. Yes, and I did not like the sound of it at all.

Q. But your last name is Anderson?

A. Correct.

(Testimony of William Ewald Anderson.)

Q. And you have never changed it? A. No.

Q. Have you ever gone under any other name?

A. No, sir.

Q. In December of 1938 did you go to Canada?

A. Yes, I did.

Q. Why did you go to Canada?

A. I was elected as a delegate to attend a convention of our Canadian organization in Vancouver, B. C.

Q. By "our Canadian organization" you mean what organization?

A. A district of the International Woodworkers of [16] America, District No. 1.

Q. Through what port did you pass when you went to Canada? A. I went through Blaine.

Q. Did you pass through Immigration at Blaine?

A. Yes.

Q. Did you give to Immigration your true and correct name? A. Oh, definitely.

Q. When you got up to British Columbia, how long did you stay?

A. I returned the next day.

Q. What did you do in British Columbia with reference to labor activities?

A. You mean during my visit there?

Q. When you went up there for the convention?

A. I just went to one session of the convention and returned the next day.

Q. Did you go up there to Canada for any other purpose than to attend the convention?

A. That was the purpose we went up for.

(Testimony of William Ewald Anderson.)

Q. And the next day was approximately in January of 1939, is that correct? A. Yes.

Q. The first or second of January, 1939?

A. Yes. [17]

The Court: What did you say the next day was?

Mr. Merges: Approximately the first or second of January, 1939.

The Court: He went up in December, 1938?

Mr. Merges: Yes.

Q. The latter part of December, was it not?

A. I think it was the first or second day of January, 1939, that I went up there.

Q. That you went up there? A. Yes.

Q. And you only stayed there for one day?

A. Yes, that is right.

Q. And by what mode of transportation did you start back? A. On the stage.

Q. Where were you going?

A. I was coming back to Aberdeen to my responsibilities there.

Q. And when you got to the border, what happened?

A. Well, the Immigration called me off, and they had a Special Board of Inquiry there for me.

Q. At the border at Blaine?

A. That is right.

Q. Did they take you off the bus? [18]

A. Yes.

Q. And when they took you off the bus did you give them your true and correct name?

A. Yes, I did.

(Testimony of William Ewald Anderson.)

Q. And where did they have the hearing of the Board of Special Inquiry?

A. Right in the office of the United States Immigration at Blaine.

Q. How long did that hearing last?

A. Oh, just a little better than half an hour.

Q. And what was the result of the hearing?

A. I was denied the right to enter the United States because I was not in possession of an unexpired Immigration visa and that I might become a public charge, and for a crime involving moral turpitude.

Q. Did you after your exclusion by the Board of Special Inquiry then return to Vancover?

A. Yes, I returned to Vancouver.

Q. Did you appeal the order of the Board of Special Inquiry?

A. I did. That was my first duty when I got back to Vancouver.

Q. And did the Board of Review in Washington, D. C., make a ruling on that appeal?

A. Yes, there was a decision handed down. [19]

Q. Was that acted upon approximately March 11, 1939? A. Yes, around that time.

Mr. Merges: Now, if your Honor please, that decision of the Board of Review in Washington is found in Part 1 of the record, and is referred to on page 3 of my brief. I have quoted an excerpt from that opinion on page 3 of my brief, and it is in Part 1 of the record.

The Court: Very well.

(Testimony of William Ewald Anderson.)

Q. (By Mr. Merges): Now, this opinion came down approximately March 11, 1939?

A. I would say just around that date.

Q. Around that date. Did you live in Vancouver, B. C., from the time you were denied admission to the United States in January of 1939 until the decision came down from the Board of Review in March, 1939?

A. I never left Vancouver.

Q. You resided continuously in Vancouver, and I suppose the decision of the Board of Review was brought to your attention? A. Yes, it was.

Q. Briefly, was it your understanding of the decision of the Board of Review that the Board of Special Inquiry was not sustained in its holding that you were likely to become a public charge and that you were guilty of [20] a crime involving moral turpitude? A. That is right.

Q. You were excluded solely on the ground that you did not have an Immigration visa, is that correct? A. That is correct.

Q. The other grounds for exclusion by the Board having been dismissed, is that correct?

A. Yes.

Q. And it was also your understanding that you were specifically granted by the Board of Review permission to apply for a visa to the American Consul, is that right? A. That is right.

Q. And understanding that, what did you do?

A. Upon receipt of the communication from the Board of Review, I proceeded to apply for an Im-

(Testimony of William Ewald Anderson.)

migration visa from the American Consul in Vancouver.

Q. Approximately when did you make that application, do you remember?

A. It was very soon after receiving the decision from the Board of Review.

Q. Probably some time in March of 1939?

A. Yes, I would say it was around that time.

Q. When you made that application, what did it entail? Will you tell us briefly? [21]

A. I made the application to Mr. Joslyn, and I was granted—it went through considerable hearings.

Q. Now, by "hearings" what do you mean? Do you mean they asked a lot of questions?

A. Yes, I was questioned at considerable length.

Q. How many different hearings, if you recall?

A. Oh, I would say probably half a dozen hearings.

Q. Did you produce any witnesses at the hearings?

A. I don't think I did because I did not have any witnesses up there in Canada, you see.

Q. You just testified yourself?

A. Yes, outside of communications that was sent in my behalf.

Q. Was the Immigration advised that the American Consul was conducting these hearings, or do you know? A. I beg your pardon.

Q. Was the Immigration, American Immigra-

(Testimony of William Ewald Anderson.)

tion, in Vancouver advised that the American Consul was conducting these hearings?

A. Yes, I suppose they were.

Q. And the purpose of the hearings was to determine whether or not you were entitled to a permanent visa to enter the United States, is that correct? A. That is right.

Q. Were you issued a permanent visa by the American [22] Consul?

A. I was on August 8th.

Q. 1939? A. Yes.

Q. And during that time you had not left Vancouver? I mean from January, 1938—January, 1939, to August, 1939? A. That is right.

Q. What did you do when you were issued the permanent visa on or about August 8, 1939?

A. Well, the same day or the day after I got my belongings together and went down to the train to re-enter the United States after Mr. Joslyn told me I was entitled to travel back home again.

Q. He told you you were entitled to enter the United States? A. Yes.

Q. Did he give you any kind of a document?

A. Yes, I received a permanent visa.

Q. The document was labeled "permanent visa" was it? A. Yes.

Q. So on the next day, on or about August 9, you boarded the train? A. That is right.

Q. And the destination was where? [23]

A. Seattle, Washington.

(Testimony of William Ewald Anderson.)

Q. Seattle, Washington. Why Seattle rather than Aberdeen?

A. My wife happened to be here at the time. She was staying with her parents, and, of course, I was going to Aberdeen from there.

Q. I beg your pardon?

A. I was going to go to Aberdeen from Seattle.

Q. Did the train stop at the border, or did you get as far as the border?

A. No, I didn't even leave Vancouver.

Q. What happened?

A. The Immigration officer stopped me and told me he would like to see me at the Immigration office for routine questioning, and asked me to meet him down there the next day, I think it was.

Q. The next day?

A. Yes, I think it was the next day.

Q. So I take it that you abandoned—at least, you got off the train or you didn't get on the train?

A. That is right. I was just ready to get on.

Q. Did this occur right at the station?

A. I was right where you catch the train on the platform.

Q. Did you have your bags with you?

A. Yes, I did. [24]

Q. And this man came up and tapped you on the shoulder? A. That is correct.

Q. Did you inform him of your name?

A. Yes.

Q. Did you show him your visa? A. Yes.

Q. What did you do then?

(Testimony of William Ewald Anderson.)

The Court: Just a moment. We will have a short recess of this matter.

(Recess.)

Q. (By Mr. Merges): Now, you were removed from the train by Immigration authorities on or about August 10, 1939, or prevented from getting on the train? A. Yes, that is right.

Q. And in response to the request of the Immigration, did you report the following day at the United States Immigration headquarters in Vancouver? A. I did.

Q. And what occurred there?

A. A series of hearings commenced which lasted until around September 6th or thereabouts.

Q. How many hearings did they have from August 9 to September 8th?

A. I don't remember the exact number, but there was quite a number of hearings held there. I could not say [25] the definite number, but they were held pretty regularly.

Q. Were you represented by an attorney?

A. No, I was not.

Q. Did you request the Immigration authorities to permit you to have an attorney? A. Yes.

Q. What did they tell you?

A. They claimed I was not allowed the right to be represented by an attorney.

Q. Did you have any witnesses testify in your behalf? A. No, I did not.

Q. Did they have any witnesses testify against you? A. No.

(Testimony of William Ewald Anderson.)

Q. Do you know whether they had any witnesses or any evidence that was introduced in your absence?

A. Yes, they had ex parte statements from three members of our union that was presented at them hearings.

Q. Were you permitted to confront these people who gave the statements and cross-examine them yourself? A. No.

Q. Were you advised of their introduction at that time? A. I think I was.

Q. And you say these hearings lasted from August 9 to September 8th. What happened upon the conclusion of [26] the hearings on September 8th, 1939?

A. Their decision was that I was denied the right to enter the United States because I was a member of an organization that was out to overthrow the United States government by force and violence.

Q. And the three witnesses who gave statements against you to the Immigration at that time were named what?

A. Clark, Deskins, and Vekich.

Q. Vekich is spelled V-e-k-i-c-h?

A. Right.

Q. Clark, Vekich and Deskins. I believe you were not permitted to confront any of these three men? A. That is correct.

Q. And you were excluded on the ground that

(Testimony of William Ewald Anderson.)

you were a member or were affiliated with the Communist Party, is that correct?

A. That is correct.

Q. Were you so advised? A. Yes.

Q. Did you appeal from that decision?

A. I did.

Q. When did you appeal?

A. Just as soon as their decision was handed down we proceeded to prepare the brief for an appeal.

Q. You say "we." Who do you mean by "we"?

A. Well, the attorney that was representing me up there.

Q. Did you get yourself an attorney then?

A. That was the man that was the union attorney up there, yes.

Q. I suppose he was called a barrister or solicitor? A. Yes.

Q. And did he file on your behalf, then, a brief?

A. Yes, he did.

Q. And as I understand this attorney was not permitted to participate in the hearings, is that right? A. That is right.

Q. And he prepared his brief only from the record that was made when you were not represented by an attorney of your choice?

A. That is right.

Mr. Belcher: If he knows. I don't know how he would.

Mr. Merges: I should not lead the witness, but

(Testimony of William Ewald Anderson.)

I am merely trying to cover it as quickly as possible. If I lead too much, stop me, please.

Q. (By Mr. Merges): Now, while this appeal was pending, did you enter the United States?

A. Yes, I did.

Q. Did you enter the United States on or about January 3, 1940? [28] A. I did.

Q. Had your visa been revoked by the American Consul at the time you entered the United States?

A. No.

The Court: January 3, 1940?

Mr. Merges: January 3, 1940.

Q. Did you pass through the Immigration at Blaine? A. I passed through, yes.

Q. You did not report to the Immigration?

A. That is correct.

Q. You passed through and did not report at the Blaine Immigration? A. Yes.

Q. But your visa had not been revoked?

A. It had not.

Q. Did you report to the Immigration immediately upon your entry into the United States?

A. I did. I proceeded to Aberdeen and reported to the Immigration in Aberdeen.

Q. How long had you been in the United States before you reported to the Immigration at Aberdeen, Washington?

A. That was practically one of my first responsibilities, to report down there, probably next day, or a day or two after. It was very soon after I came in.

(Testimony of William Ewald Anderson.)

Q. And you went to the local Immigration office at [29] Aberdeen, is that right?

A. I did, that is right.

Q. Did you inform them that you had come across the border without reporting to the Immigration at Blaine? A. I did.

Q. Did you surrender yourself to the Immigration? A. I did.

Q. In Aberdeen? A. Yes.

Q. And what did the Immigration authorities do? Did the Immigration authorities confine you?

A. No, they did not.

Q. Did they put you under bond? A. No.

Q. How long did you reside in Aberdeen after your reporting to the immigration on January 3, 1940? A. Until early in 1942.

Q. Until early 1942?

A. Yes, until 1942 some time.

Q. You had been indicted, had you not, for illegal entry? A. That is right.

Q. And did you serve a sentence? A. Yes.

Q. For how long were you sentenced?

A. I was sentenced to eleven months in the Dupont Federal [30] Road Camp.

Q. How many months did you serve?

A. I got off for good behavior, and I think it was around nine or nine and one-half months; something like that.

Q. That you actually served? A. Yes.

Q. What did you do after you were released from the Road Camp in Dupont?

(Testimony of William Ewald Anderson.)

A. I was returned to Tacoma and then to Seattle, and I was released to my wife, and immediately, as soon as I was out, I went to work.

Q. And what kind of work did you begin?

A. I went to work on the waterfront as a marine rigger.

Q. In Seattle? A. Yes.

Q. Now, did you leave the United States at all from the time you came in in 1940, in January?

A. No.

Q. Did you live in Seattle thereafter?

A. Yes.

Q. Were you affiliated with any organization—any labor organization or political organization at that time?

A. Yes, I belonged to the Boilermakers Union after I [31] went to work as a marine rigger.

Q. Were you a member of any political party or organization up until that time other than the International Woodworkers Union and the Boilermakers Union? A. That is right.

Q. I asked you the question, were you. For the purpose of the record you must answer responsively.

A. Them are the two organizations I belonged to.

Q. Did you belong to any others? A. No.

Q. Now, while you were in the road camp, your appeal from the decision of the Immigration in Vancouver was pending, was it not?

A. That is right.

(Testimony of William Ewald Anderson.)

Q. And while you were in the road camp the Board of Immigration Appeals handed down a decision, did it not? A. That is correct.

Mr. Merges: That decision, if your Honor please, is found in File No. 2. I quote from that decision on page 5 of my trial memorandum.

Q. Now, the substance of the decision of the Board of Immigration Appeals rendered on your appeal was that you were given permission to apply for suspension of your deportation, is that correct?

A. Yes. [32]

Q. And pursuant to that decision, which was rendered on September 18, 1942, did you then make application to the Immigration authorities for suspension of your deportation? A. I did.

Q. Did the Board of Review hold according to your understanding that your not being permitted to confront your accusers, your hearing was not an adequate hearing? A. That is correct.

Q. So then you employed an attorney in Seattle to represent you on your application for stay of deportation? A. Yes, I did.

Q. And did they have hearings on that?

A. Yes, there was numerous hearings commencing from 1943 until 1944, I believe.

Q. You had a number of hearings, then, from 1943 to 1944 on your application for stay of deportation? A. Yes.

Q. And at those hearings you were represented by counsel? A. Yes.

Q. Did the Immigration produce the three wit-

(Testimony of William Ewald Anderson.)

nesses, namely, Clark Vekich and Deskins, who had testified against you previously?

A. No, there was just one witness presented there, and [33] that was Deskins.

Q. That was Deskins? A. Yes.

Q. Was your counsel permitted to examine Deskins? A. Yes.

Mr. Merges: I would like to call the Court's attention to page 6 of my brief, in which I quoted a portion of the testimony of the witness Deskins.

Q. Were you there when Deskins testified?

A. Yes.

Q. Did he in substance recant his prior testimony that you were affiliated with the Communist Party?

A. He did.

Q. Did the Immigration authorities produce the other witnesses? You say they did not produce either Clark or Vekich? A. That is right.

Q. Did they produce any other witnesses who testified against you?

A. Yes, they produced five more witnesses.

Q. And they testified during these series of hearings that were held in 1943 and 1944?

A. Yes.

Q. Were you permitted to confront them? [34]

A. Yes, my attorney was permitted to examine them.

Q. And your attorney examined each of these five new witnesses who were produced by the Immigration? A. Yes.

Mr. Merges: The summary of the testimony of

(Testimony of William Ewald Anderson.)

these five new witnesses appears on pages 7, 8, 9, 10 and 11 of my trial memorandum.

Q. Did any of these witnesses testify of their own personal knowledge that you were a member of or affiliated with the Communist Party in your presence? A. No.

Q. Were some of these witnesses members of the union? A. Yes.

Q. Was there any friction between the members and officers of the Union during the period that you were an officer?

A. Yes, there was quite a heated battle going on in the organization.

Q. The union was divided into two different warring camps?

A. Probably three some times.

Q. Probably three. And you represented one, and various other people represented the others, is that correct? A. Yes.

Q. Had any of these witnesses who testified against you been members of other factions in the union? A. Yes. [35]

Q. Which ones?

A. Well, they belonged to the faction that was opposed to me.

Q. Why were they opposed to you?

A. Well, they probably thought I was not doing the proper thing or not according to what they thought was their idea of running the union.

Q. Name the five witnesses who testified against you in the 1943 and 1944 hearings?

(Testimony of William Ewald Anderson.)

A. One was——

The Court: Does the record show them?

Mr. Merges: Yes.

A. ——Villas Lant, John Gillespie, Ward Penning, D. Shanley, and Art Davenport.

Q. Did the Government produce any other witnesses than the witnesses you have named?

A. No.

Q. Did you produce any witnesses on your behalf? A. I did.

Q. Will you name the witnesses who testified in your behalf, if you know?

A. Frank L. Morgan.

Q. What was his business at that time?

A. He was State senator and attorney.

Q. Who else? [36]

A. Ray De Kracy, attorney; Charles Savage, State representative; Harvey Nelson, who was a logger; Clarence Williams; William McDonald; Denee Dyer; Ted Dokter. I can't recall any others now.

Q. On July 25, 1944, did the Immigration conclude their hearings—on or about July 25, 1944?

A. Yes.

Q. Did they make a finding that you were a member of or affiliated with the Communist Party?

A. That was their decision.

Q. And after reopening, this decision was reaffirmed on May 9, 1945, is that correct?

A. Yes.

The Court: When was this?

(Testimony of William Ewald Anderson.)

Mr. Merges May 9, 1945.

The Court: After reopening?

Mr. Merges: Yes.

The Court: Reaffirmed.

Q. Was this matter argued before the Board of Immigration Appeals on August 24, 1945?

A. Yes, it was.

Mr. Merges: Does your Honor have a question?

The Court: No.

Mr. Merges: On August 24, 1945, it was argued before the Board of Immigration Appeals. [37]

Q. Now, during this time while these hearings were going on in 1943 and 1944, where did you live?

A. I lived in my home in Seattle.

Q. With your wife?

A. Yes, wife and two boys.

Q. Is your wife an American citizen?

A. Yes, she was born in Othello, Washington.

Q. And the two boys are American citizens?

A. Yes.

Q. They are her children by a prior marriage, I take it? A. That is right.

Q. Did you adopt these children? A. Yes.

Q. Now, what action did the Immigration take on your case after the matter was argued to the Board of Immigration Appeals on August 24, 1945? Did they take any action on it in 1946?

A. No.

Q. Did you continue to live in Seattle in 1946?

A. Yes.

Q. Did they take any action in 1947?

(Testimony of William Ewald Anderson.)

A. No.

Q. And what happened in 1948?

A. I believe the decision was handed down, and I was——

Q. In 1948? [38]

A. Yes, and I was ordered deported.

Q. Did you live in Seattle all during that time?

A. Continuously, yes.

Q. What business were you in? Were you still working on the waterfront?

A. No, I am barbering. I have my own barber business.

Q. When did you start barbering?

A. In 1946.

Q. Where is your barber shop?

A. 503 West 65th.

Q. Do you employ any other barbers?

A. Yes, I have a part-time employee.

Q. Then in 1948 the opinion of the Board of Immigration Appeals was handed down, is that correct? A. Yes.

Q. And that opinion held that you were affiliated with or a member of the Communist Party?

A. Yes.

Q. And you were ordered deported?

A. That is right.

Q. Did you then make application for stay of deportation? A. Yes, I did.

Q. And that application was refused, was it not?

A. I think it was, yes.

(Testimony of William Ewald Anderson.)

Q. On the ground that you were not eligible for suspension [39] because of the fact that there had been a finding that you were a member of or affiliated with the Communist Party? A. Yes.

Q. And thereafter you brought this proceeding, is that correct? A. That is correct.

Q. Are you still living with your wife?

A. Yes.

Q. And the boys living with you?

A. Yes, they are.

Q. How old are the boys now?

A. One is 17. The youngest is 17 and will be 18 this coming week. The oldest is 19.

Q. Have they been going to school?

A. Yes.

Q. Are they in school now?

A. Yes, they are on vacation now. One of the boys, the youngest, goes to Ballard High. He is on vacation. The other boy is also taking some time off.

Q. You have been supporting the boys?

A. I have.

Q. And your wife has been working part-time?

A. Yes, she has been working.

Q. Do your boys wish to continue their education? [40] A. Yes.

Q. And are you willing to support them and put them through school?

A. Yes, you bet I am.

Mr. Marges: I invite your Honor's attention to the affidavits of the two boys found in Part 6 of the record.

(Testimony of William Ewald Anderson.)

Q. At these various meetings that you attended, union meetings, were there Communists present?

A. I presume there were, yes.

Q. There were quite a few Communists down in that country at that time, as a matter of fact, were there not? A. Yes.

Q. Were you ever affiliated with any of the members of the Communist Party—working with them in any way?

A. Oh, I would not say "working with them," no. Probably members of the union—there were probably Communists in the union, if that is what you mean.

Q. You mean by reason of your duties in the union you had occasion to work probably with some people who were Communists? A. Yes.

Q. Did you ever do any work for the Communist Party? A. No.

Q. Did you ever distribute any literature for the [41] Communist Party?

A. I never did.

Q. What was the purpose of the meetings that you went to in Aberdeen?

A. It was mainly and specifically on matters pertaining to the union.

Q. I suppose the union discussed the political affairs? A. Yes.

Q. Did you ever attend a Communist meeting?

A. No.

Q. You have, as I understand you to say, at-

(Testimony of William Ewald Anderson.)

tended meetings where a good many Communists were present? A. Oh, yes.

Mr. Merges: That is all.

The Court: It is ten o'clock. We will have a ten-minute recess.

(Recess.)

Q. (By Mr. Merges): You called my attention to a slight mistake you wish to correct in regard to the exact length of time you spent in road camp?

A. Yes, I served an additional 30 days to take care of a fine that was imposed on me.

Q. That was not for any misconduct?

A. No. [42]

Mr. Merges: That is all.

Cross-Examination

By Mr. Belcher:

Q. Mr. Anderson, is this International Woodworkers of America what is commonly known as the I.W.W.? A. No.

Q. Were you in Aberdeen at the time there was such an organizatoin as the I.W.W.?

A. No, I was not in Aberdeen then.

Q. But there were Communists—known to you to be Communists, that were members of the International Woodworkers Union, who attended those meetings?

A. There were several admitted members of the Communist Party, yes.

(Testimony of William Ewald Anderson.)

Q. And isn't it a fact that at those union meetings the Communists who were members took considerably more of an active part than the other members who were not Communists?

A. At certain times they did.

Q. And that condition prevailed in the union of which you were the Secretary?

A. Well, I would not say that. If the inference is that they had the full swing of the union, they did not. [43]

Q. What were the occasions of the 17 meetings a week of your union? Labor disputes?

A. Labor disputes, industrial insurance cases, political welfare meetings, committee meetings on sick cases, and other meetings concerning the union.

Q. Now, in these political welfare meetings that you say you had, did the Communists attend those meetings who were also members of the I.W.W.—I mean the International Woodworkers?

A. Very possibly so.

Q. Do you recall? You were Secretary of the organization at that time, were you not?

A. I was the District Secretary, yes.

Q. Were there any discussions in the union at any time about the activities of the Communists somewhat ruling the association?

A. In the union?

Q. Yes? A. Yes.

Q. Were your meetings recorded?

A. Just longhand minutes taken.

(Testimony of William Ewald Anderson.)

Q. Why did you leave the International Woodworkers of America?

A. Well, after I served my time in Dupont, I came to Seattle, and I thought that if I left the International [44] Woodworkers of America, I probably might get favorable consideration from the Immigration authorities, if I got into another occupation.

Q. Now, were you in dispute with the authorities——

A. You mean of the International Woodworkers?

Q. Yes.

A. Well, there was considerable turmoil at that time.

Q. Now, this function that you attended at Vancouver—how long did it last?

A. Oh, it probably lasted a week. They usually last a week.

Q. You went up there for one special purpose?

A. Yes.

Q. And stayed but one day? A. Yes.

Q. Do you know whether or not the organization in Canada was dominated by Communists?

A. No, I don't know.

Q. What was the particular phase of the union in Canada that you went up to that function about?

A. Well, more or less—when we had our district functions, it was more or less of a conveying of greetings from another district to the district that is having the function, and usually reporting on

(Testimony of William Ewald Anderson.)

conditions and wages and negotiations and so forth.

Q. Were there any discussions had at the meeting that you attended in Canada concerning Communism? A. No.

Q. Now, Mr. Anderson, have you ever been at any time a member of or affiliated with the Communist Party? A. No.

Q. And I take that answer to mean that you are not now—— A. That is correct.

Q. ——a member of or affiliated with the Communist Party? A. That is correct.

Q. Throughout the various hearings that you have had before the Immigration authorities, how many different lawyers have represented you?

A. I would say four; probably five.

Q. Outside of Judge Beeler?

A. Mr. Merges and Mr. Stanton from Vancouver, B. C., and Mr. Frank Morgan represented me, too.

Q. Anybody else?

A. That is all, I am quite sure.

Q. Did Ross Kingston represent you?

A. Yes, that is right; he did.

Q. Who was the attorney for the International Woodworkers in 1940?

A. You mean the parent body?

Q. Yes, either the local or the parent body? [46]

A. The locals had different representation, and the International had its, and the districts had different representation. I think our particular union was represented by the Gershon brothers. I can't

(Testimony of William Ewald Anderson.)

think of the name of the man who was the International's attorney at that time. He represents the Teamsters organization in Los Angeles now. I can't recall his name. He ran for governor of the State.

Q. John C. Stevenson?

A. That is correct, yes.

Q. Now, you know that a permanent visa such as was granted to you by the Consul at Vancouver of itself did not entitle you to enter the United States, didn't you?

A. Mr. Joslyn told me that there was only one in 10,000 that didn't get back into the United States in possession of a permanent visa.

Q. You knew, did you not, that in addition to the visa you must be otherwise qualified?

A. I didn't hear the question.

Q. You have to be otherwise qualified to cross the border? A. Yes, I presume you do.

Q. Why did you not go to the Immigration station and report at the time you say you crossed the border on foot? [47]

A. Well, I thought that by reporting in Aberdeen and promptly reporting there, that it would be all right.

Q. In other words, you were going to get into the United States whether or no, and then report it afterwards?

A. I would not say that. I went straight to Aberdeen when I crossed the border.

Q. Was there any congestion at the border so

(Testimony of William Ewald Anderson.)

that you could not have gone through in the regular course?

A. No, I would not say there was.

Q. But you knew at the time you crossed the border on foot that you had been excluded and not permitted to pass through?

A. Yes, I had been excluded, yes.

Q. And you never have at any time since you have been back to the United States attempted to be repatriated.

A. That has been my great wish, but since the Immigration has been holding these hearings, I figured I was not eligible to apply for repatriation.

Q. You did not make any attempt to do so?

A. I have discussed it with my attorney many times.

Q. But you have not discussed it with the Immigration officials?

A. I have not personally, no.

Q. Isn't it a fact, Mr. Anderson, that when you did report at Aberdeen, your unlawful crossing of the border, [48] that you were immediately placed under arrest and posted bond?

A. No, I don't think that is correct. I was not placed under arrest.

Q. You were not placed under arrest? What date was it that you say you reported at Aberdeen?

A. Oh, I would say it was around the 3rd or 4th of January, 1940.

Q. Then there was an investigation held, was there not?

(Testimony of William Ewald Anderson.)

A. Yes, in the office of the Immigration.

Q. Where?

A. In the office of the Immigration.

Q. Where? Aberdeen?

A. In Aberdeen, yes.

Q. And you were then placed under arrest after the conclusion of that hearing?

A. No, I was not. I was released.

Q. You were released on bond. You put up bond, didn't you?

A. I can't recall that particular point.

Q. Well, if the record shows that you were taken into custody and placed under bond, would you say the record is correct?

A. If the record shows I was.

Q. That was on the 22nd day of January, 1940.

A. Yes, that was later. I thought you were referring to the time I reported to the Immigration.

Q. That is all. And you are still on bond?

A. Yes, I am still on bond.

Mr. Belcher: That is all.

Redirect Examination

By Mr. Merges:

Q. What date was it approximately that you reported to the Immigration? A. January 4th.

Q. January 4th? A. 1940.

Q. And that was immediately after you came across the border, is that correct? A. Yes.

Q. And you were not arrested until when?

(Testimony of William Ewald Anderson.)

A. Probably later that month.

Q. Probably later that month? A. Yes.

Q. After you were arrested later that month, did you put up bond? A. That is correct.

Q. But you had reported some time previous to to that time? A. Yes. [50]

Q. I believe you testified that the reason you have not applied for naturalization is because your attorney,—since you have been back, your attorney advised you that until this matter that is pending is settled, you should not do anything about it?

A. That is right.

Q. And you took his advice and decided to wait until it is settled? A. I did that.

Q. What do you propose to do when this is settled, if you are permitted to remain in this country?

A. I intend to apply for repatriation as soon as possible.

Q. Was it your impression that you had abandoned your American citizenship when you applied for naturalization in Canada?

A. No, I was always of the opinion that you can always maintain your nationality.

Q. You thought that when you came back in 1935 you were an American citizen?

A. I thought after a certain period of residence I could reestablish myself, yes.

Mr. Merges: I think that is all.

(Testimony of William Ewald Anderson.)

Recross-Examination

By Mr. Belcher: [51]

Q. At the time of the judgment and sentence, at the time the judgment and sentence were entered against you for having unlawfully entered the United States, and you were sentenced to the prison camp at McNeill Island, do you recall whether or not the judgment and sentence provided that at the expiration of the term in the penitentiary that you should be immediately deported to Canada? A. The decision did not state so.

The Court: Does the record show that judgment?

Mr. Belcher: The record does not show that judgment. May I have a moment to go down and get the file?

The Court: Who was the judge who entered the judgment?

Mr. Belcher: The record does not show, your Honor. I have the number of the case.

The Court: Is it in this court here in Seattle?

Mr. Belcher: Yes, No. 45,571, with a sentence of eleven months and a $500 fine on Count 1.

Mr. Merges: To save time,—I have no objection to this procedure, but it seems to me it is entirely irrelevant, because the only question [52] before the Court is whether or not the authorities were justified in what they did.

The Court: That would be true ordinarily, but you discussed the sentence, how much it was, and

(Testimony of William Ewald Anderson.)

how much extra time he served, and it has become proper. What I am to do with it is for later determination, but at least you examined on it.

Mr. Merges: I am not making any objection to it, because I don't think it makes any difference. I think possibly we might go on to something else while we are waiting for the file.

The Court: Have you anything else to take up, Mr. Belcher?

Mr. Belcher: I think I have gone as far as I can.

The Court: Have you something else?

Mr. Merges: I would like to call Mr. Anderson's wife. I guess the file is here now.

Q. (By Mr. Belcher): In Cause No. 45,571,—you are the same William Ewald Anderson who was named defendant in that cause? A. Yes.

Q. That case was tried before a jury, was it not?

A. Yes.

Q. On two counts? [53] A. Yes.

Q. And you were found guilty on both counts, were you not, by the jury?

A. I did not know there were two counts on it.

Q. You are the same William Ewald Anderson against whom a judgment on the verdict of the jury was entered by Judge Bowen on the 14th day of March, 1942, wherein you were sentenced to a period of eleven months and to pay a fine to the United States of America in the sum of $500, and to stand committed until the fine is paid or otherwise discharged by law. Is that right? A. Yes.

Q. Correct? A. That is correct.

(Testimony of William Ewald Anderson.)

Q. There was nothing in the judgment that required immediate deportation.

The Court: Is there any reason I should not see it?

Mr. Merges: No, none whatsoever.

Mr. Belcher: I will offer the entire file to supplement, so far as the judgment is concerned,——

Mr. Merges: I will object to it, if your Honor please, on the ground that it is wholly immaterial to the issue involved here. It does not prove or disprove one way or the other whether this man is affiliated with or a member of the Communist Party.

The Court: What are you offering?

Mr. Belcher: I am offering a copy of the judgment in Cause No. 45,571, together with the verdict of the jury and the indictment, with the privilege of furnishing certified copies.

The Court: The indictment, verdict of the jury, judgment and sentence are admitted. The objection is overruled. Certified copies are to be furnished. I think I have made clear already the reason. The petitioner has been advised of the charge against him, the sentence, his service of it, the fine, the good-time allowance, and while the matter might have been immaterial, the petitioner having put that much in, the Government may put in evidence so much more as may clarify the exact situation.

You may proceed.

Mr. Belcher: That is all.

Mr. Merges: That is all.

(Witness excused.)

MRS. WILLAM EWALD ANDERSON

A witness produced on behalf of petitioner, being first duly sworn, testified on oath as follows: [55]

Direct Examination

By Mr. Merges:

Q. Will you sate your name to the Court, please?
A. Mrs. William Anderson.
Q. Will you state your own first name?
A. Gladys.
Q. You are the wife of William Ewald Anderson, the petitioner in this case, is that correct?
A. I am.
Q. Where do you live? A. Seattle.
Q. Are you living with Mr. Anderson?
A. I am.
Q. Who else lives with you?
A. Our two sons.
Q. Are you a citizen of the United States?
A. Yes, I am.
Q. By reason of birth in this country?
A. That is right.
Q. When and where were you born?
A. June 5, 1911, at Othello, Washington.
Q. Where?
A. Othello, Washington.
Q. Have you ever renounced your United States citizenship? [56] A. I have not.
Q. Where were the boys born? A. Seattle.
Q. How old are they?
A. Don is 17 and Gene is 19.

(Testimony of Mrs. William Ewald Anderson.)

Q. Have they ever been outside of the country?

A. No, they have not.

Q. Have they ever renounced their United States citizenship? A. No.

Q. Are they the legally adopted sons of Mr. Anderson? A. They are.

Q. Will you state whether or not he is a father to them? A. Yes, he is.

Q. Upon whom are they dependant for support?

A. Upon him.

Q. Upon whom are you dependent for support?

A. Upon him.

Q. Has he ever failed to support either you or the boys? A. No, he has not.

Mr. Belcher: It seems to me this is going pretty far afield of the question before your Honor.

The Court: Well, it would have been, but he testified to these matters without objection. Insofar as what you are saying is an objection, it is [57] overruled.

Q. You have been working, have you not?

A. Yes, part time.

Q. And will you tell the Court why you have been working?

A. Well, for the past seven years I have had to work nearly steady to help supplement our income because of the expense connected with sickness in the family.

Q. Will you state to the Court what your physical condition is?

(Testimony of Mrs. William Ewald Anderson.)

A. Well, I am under constant care of a physician, and have been since 1940, and practically constantly since 1946.

Q. Did you undergo a major operation recently?

A. I have undergone two major operations in the past two years.

Q. In the past two years? A. Yes.

Q. Who performed them?

A. Dr. R. E. Tennant.

Q. At what hospital were they performed?

A. Columbus.

Q. What was the nature of the operation?

A. Well, I had a total hysterectoy.

Q. And have the results of the operations been successful? A. No.

Q. Is your physical condition such that you will be able to continue work?

A. No, not steadily. I should not be working at all.

Q. Do you wish to remain in this country?

A. Yes.

Q. Do you wish your boys to remain here?

A. Yes.

Q. Do they propose to go to some institution of higher learning?

A. Yes, they both want to go to the University.

Q. Has your husband indicated a willingness or desire to put them through school? A. Yes.

Q. Do either of the boys wish to go to and live in Canada? A. No.

(Testimony of Mrs. William Ewald Anderson.)

Mr. Merges: That is all.

Mr. Belcher: No questions.

The Court: I have some questions, if I may have counsel's consent?

Mr. Merges: Yes, certainly.

Examination by the Court

Q. When were you and Mr. Anderson married?

A. July, 1939. Today is our anniversary.

Q. And you were married on the 19th? [59]

A. Yes.

Q. When were the two boys adopted?

A. In 1946, I believe, or 1947.

Q. 1946 or 1947?

A. Yes. We waited until they were old enough to decide whether they wanted to be adopted.

Q. Where were you married?

A. Vancouver, B. C.

Q. Was there any proceeding pending against your husband at that time?

A. Yes, the original exclusion from the United States.

The Court: I have nothing further. Have either of you anything?

Mr. Merges: Yes, since the Court is interested in that phase of the case, I would like to bring out something more about it.

(Testimony of Mrs. William Ewald Anderson.)

Direct Examination
(Resumed)

By Mr. Merges:

Q. You and Mr. Anderson lived together before you were married, is that correct?

A. That is right.

Q. How long? A. A year and a half.

Q. And why didn't you marry? [60]

A. Because he did not have a divorce.

Q. I beg your pardon?

A. His divorce was not final.

Q. His divorce was not final? A. Yes.

Q. Did you marry as soon as the divorce became final? A. Yes, immediately.

Q. Did you intend to marry when you were living together then? A. Yes.

Q. Was there any other reason why you didn't marry other than the fact that you could not legally do so? A. No.

Mr. Merges: That is all.

The Court: Have you any questions, Mr. Belcher?

Mr. Belcher: No.

The Court: I may ask a few more.

Examination by the Court
(Resumed)

Q. When did he start his divorce?

A. January, 1939.

Q. He started his divorce in January, 1939.

(Testimony of Mrs. William Ewald Anderson.)

Where was his wife living? A. Vancouver.

Q. B. C.? A. Yes.

Q. Where did he start his divorce?

A. In Vancouver.

Q. Did he get the divorce, or she?

A. She got it.

Q. She got the divorce. Have they any children? A. Two.

Q. Where are they? A. Vancouver.

Q. Do you know how old they are?

A. 24 and 25. I would like to add, your Honor, that they visit us regularly and think a lot of both my husband and I. In fact, they were just down over the Fourth of July to visit us.

Q. What happened to your first marriage?

A. Divorce.

Q. When were you divorced? A. 1936.

Q. Who got it?

A. I did, and received custody of the children.

Q. What?

A. I got custody of the children.

Q. When did you and Mr. Anderson start living together? A. In 1938; March, 1938. [62]

Q. Were you connected with the union?

A. No.

Q. Was your former husband?

A. No. I belonged to the auxiliary, the women's auxiliary, but not to the union itself.

Q. How did you belong to the women's auxiliary?

(Testimony of Mrs. William Ewald Anderson.)

A. Wives and sisters and daughters of union men—the women had an auxiliary organization that they could belong to if their husbands were in the industry.

Q. When was it that you joined?

A. I can't recall the exact date.

Q. What year? A. 1938, I imagine it was.

Q. What was the basis of your joining?

A. What was the basis?

Q. Whose relationship allowed you to join?

A. We were living together as man and wife, and everybody took it for that.

Q. You and Mr. Anderson were going under the name of Mr. and Mrs. Anderson?

A. That is right.

Q. You were supposed to be married?

A. That is right.

(Witness excused.)

Mr. Belcher: May I have the privilege of [63] recalling Mr. Anderson for a question.

The Court: You may.

WILLIAM EWALD ANDERSON

a witness produced in his own behalf as petitioner, having been previously sworn, testified on oath as follows:

Cross-Examination

(Resumed)

By Mr. Belcher:

Q. Mr. Anderson, is it a requirement of the International Woodworkers Union that district officers be American citizens? A. No.

Q. It is not? You are quite sure of that?

A. I am not positive about it, but I don't believe there is anything in the constitution to that effect.

Q. Did you disclose to the lodge that you were a Canadian before they elected you to office?

A. I was never asked that question.

Q. You were never asked that? A. No.

Q. The members of the lodge were led to believe——

The Court: When you speak of "lodge" what do you mean?

Mr. Belcher: International Woodworkers of America. [64]

Q. ——were led to believe by your conduct that you were an American citizen?

A. Well, they didn't seem to care because I seemed to represent them.

Q. Didn't you have to tell anybody when you joined the union whether you were an American citizen or not?

(Testimony of William Ewald Anderson.)

A. I never concealed the fact, and I was never asked the question.

Q. Don't you have to sign an application to join one of those unions? A. Yes.

Q. Don't they ask your nationality?

A. No.

Q. And it is not a requirement that you be an American citizen to be an officer of that union?

A. No.

Mr. Belcher: That is all.

Mr. Merges: That is all.

(Witness excused.)

The Court: Anything further?

Mr. Belcher: We offer in evidence the Immigration files.

The Court: What is that? What is before me?

Mr. Belcher: Yes, what is before you.

Mr. Merges: The entire record of the [65] Immigration Service?

The Court: The entire Immigration record is there, is it?

Mr. Belcher: Yes.

The Court: Any objection?

Mr. Merges: No objection.

Mr. Belcher: The Government rests.

Mr. Merges: We rest except for argument.

The Court: Petitioner and government rest as to evidence.

This petitioner has been in the United States a long time. No one could criticize the Immigration

Board of Appeals under the evidence for being too hasty in rendering its decision. Therefore, certainly, that Board cannot properly complain if I take a reasonable time to familiarize myself with this record. I am assuming that Mr. Anderson does not care how long I take.

Mr. Merges: The Board took two and one-half years, and the only reason they decided the case was because I had to write them and beg them to decide the case because the bond that was up was part of Adam Beeler's estate, and we could not close the estate until the Government made some progress.

(Discussion off the record.) [66]

The Court: I don't know just how long it will take. I will endeavor to determine it reasonably soon, but in view of the apparent time without reason taken by the Board, I feel that I should give preference to other litigants who have been endeavoring to present their matters speedily over this matter, first, because the Board at least has no right to complain, and, second, because I know Mr. Anderson and his attorney do not care how long I take.

Mr. Merges: If your Honor please, I would not say that. I would like to get it determined. I don't say I don't care how long you take because he wants to get his problem straightened out. After all, it is tough on his wife and children. I am not urging the Court to make a speedy decision. I would like to have the opportunity of oral argu-

ment, because I am very familiar with this case, and I think it might be of some assistance to the Court.

The Court: From what has been suggested to me and a casual examination that I have made of the trial briefs or memoranda, I am satisfied that after I have looked at the record I will wish the help of argument from each side. I did not analytically read the trial memoranda. I have read such as I [67] mentioned casually, so as to let me better appreciate the purpose of the showing made today. I am assuming that much of the showing made today—perhaps all of the showing made today—at most merely amounts to an explanation to the Court.

Mr. Merges: To save the Court's time is all.

The Court: If on the record Mr. Anderson is entitled to prevail, he should. If on the record he is not entitled to prevail, I doubt very much that anything that happened here today could change it. That is not a ruling. I am satisfied in any event that very much of what has been presented today is not the basis for a decision. Primarily, the record is what must be decisive.

Mr. Merges: If I may say so, I think what we have presented today will assist very materially in going through the record, because if you had to start on it cold, it would be a terrific job. I know, because I did. I inherited it from Judge Beeler, and I started on it cold.

The Court: I am satisfied of that. I am of the

opinion that the Court's time will be much saved by what happened this morning and that in addition my examination of the record has been made much easier. [68]

Thank you.

This matter is adjourned subject to call. In other words, it is understood that before I render an opinion I am going to call counsel in for the purpose of asking at least argument on those phases that I feel I need help upon.

(Hearing adjourned.) [69]

November 4, 1949

The Court: I have asked counsel on both sides to be present at this time.

This proceeding before it reached the Court covered a surprising period of time. After the petition was presented to the Court the Court upon repeated requests by or in behalf of the petitioner continued the hearing. The matter was presented to the Court on the 19th of July of this year.

The many years during which the proceeding had been pending before reaching the Court have resulted in a very substantial and very complicated record. Such substantial and complicated record was made more complicated by being confused with duplicates and triplicates, some of which duplicates were in whole and in part and some of which were only partial as to even parts.

As a result, plus other obligations of the Court and other litigation, the matter of determining the

issue has been continued until this date. Ordinarily, I would feel considerable concern for the delay, but in the light of the previous history, I take it that what ordinarily would be tardy action on the part of the Court is quite prompt.

I am going to announce my decision today. I will not set forth the reasons for such conclusion. I felt that the parties should know at this time what the decision is. Upon my return from California the appropriate documents can have been prepared, served and then presented to the Court for signature.

I have examined this complicated record and carefully refreshed my memory by the notes as to what occurred in open Court. I have considered the argument of counsel and the citations of authorities presented. I am satisfied under the law governing this proceeding before me that this Court would not be justified in setting aside the determination that has been made. I find no arbitrary action on the part of the authorities. I find that under the rules and law applicable to them that they have acted within their authority. I find that under the rules and law applicable to the hearings and proceedings before them that their conclusion was supported by substantial evidence.

It is not necessary to say whether some other tribunal would or would not have reached the same conclusion. I am satisfied to say today that the authorities had the lawful right to find as they did, and, therefore, the writ will be denied.

If there is an emergency that requires that I

sign the appropriated documents today before I leave, such can be signed. My own opinion was that the government [71] has no right to be critical if the matter is delayed until my return.

Mr. Belcher: There is no emergency.

The Court: My assumption is that the petitioner would prefer to have such period to make preparation for whatever course he decides to follow. So I am assuming that not only would the government not be justified in being critical but, actually, the government has no objection to that delay.

Mr. Belcher: That is correct.

The Court: I am assuming that the petitioner would prefer that the matter go over until December. Is that right, Mr. Merges?

Mr. Merges: That is correct.

The Court: On Monday, December 12, at 10:00 a.m. I will fix a time for giving an oral opinion setting forth some of the reasons for my having come to the conclusion I have. The oral conclusions will be what I have already said, that under the law and the rules I do not feel I would be justified in setting aside the conclusion and determination that has been reached by authorities whom I find had the authority and legal right to decide as they did.

So if you will be here on the 12th of December, I can fix a time for giving you some more reasons. Then [72] you will be prepared to present appropriate documents.

Is that satisfactory?

Mr. Belcher: That is satisfactory, your Honor.

Mr. Merges: That is satisfactory, your Honor.

The Court: It is satisfactory to both sides. [73]

[Title of District Court and Cause.]

COURT'S ORAL DECISION

The Court: Counsel are here in connection with announcement of some of the reasons that caused the Court heretofore to advise Counsel that it was denying the petition for writ of habeas corpus in the Matter of the Petition of William Ewald Anderson for a Writ of Habeas Corpus, Cause No. 2083.

In the first instance, the Court may say it did not find in the voluminous record which the Court studied carefully any legal justification for setting aside the holdings and decision of the Immigration authorities. It is a well established principle of law that the Court in a habeas corpus proceeding is not authorized to substitute its judgment for the judgment of Immigration authorities merely because the Court might have come to a different conclusion had it been in a position of authority in the Immigration Department and acting in connection with the matter before the Immigration authorities.

So at the outset I may repeat that I find no justification legally for substituting my judgment for the judgment exercised and announced in the Immigration proceedings.

So that there will be no mistake, I may say I have no quarrel with the decision of the Immigration authorities. Even if I did have authority to substitute my judgment for theirs, I am satisfied that I would not feel justified in so doing.

There are a number of matters urged as a combined appeal to the sentiment of the Court in the hope that such would cause the Court to hold that it had a power which I am satisfied it does not have. But, analyzed, the appeals to the sentiment of the Court are of a character which, if successful, would establish dangerous precedents.

One of the appeals is based upon the fact that the petitioner is married to an American citizen. An analysis of all the facts and circumstances surrounding that marriage and surrounding the period preceding the marriage makes it clear how dangerous the precedent would be if such was permitted to set aside long enunciated principles of law applicable in connection with a habeas corpus proceeding with respect to immigration.

The petitioner, while born in the United States, was alleged to have become a Canadian citizen so that he might make about one voyage as a fisherman, the privilege of so doing being restricted to Canadian citizens. Digressing for a moment, I may say that I am not highly impressed with the deep feelings of American patriotism of any individual who is willing to give up his citizenship wholly for the purpose of making it possible for him to engage in one particular kind of work. There is no showing attempted—I am sure none could have been

made—indicating that the petitioner could not have retained his American citizenship and had other employment in Canada. But, in any event, after the petitioner chose to trade his American citizenship for an opportunity to do a particular kind of work, he decided to and later did return to the United States. He was already married to a Canadian woman pursuant to a marriage performed in Canada, and had children as a result of such marriage. Nevertheless, after he arrived in the United States he commenced to live with a woman who is now his wife. She knew he was married. She must have known that it was unlikely that he ever could be divorced save and except as his Canadian wife chose to secure a release from the matrimonial bonds. He had no reason or excuse for a divorce. She elected to live with him under pretended marriage. She had two children by a former husband.

In connection with certain union activities he returned to Canada in 1938, and in January, 1939, was detained by the Immigration authorities who were questioning his right to enter the United States. Some two months later his Canadian wife secured a divorce. Thereafter, and while he was detained in Canada, and while his present wife realized that he might never be allowed to enter the United States, she chose to go to Canada and entered into a marriage with him. Whether or not among other purposes of that marriage the petitioner and she thought it would aid his return to the United States, I do not know, but in any event

if such a marriage after his immigration status was under substantial question should be an excuse for exercising clemency and leniency, it would be a precedent for other applicants for immigration.

In the latter part of 1939, after a hearing, the Immigration authorities denied his right to enter. He appealed. While the appeal was pending, and wholly disregarding the laws of the United States, he illegally, wilfully, and intentionally came across the border, eluding inspection.

The implication is difficult to overlook that he came to the conclusion that if he got into the United States, even illegally, that it might take a long time to get him out regardless of his lack of legal right to be in the United States. If that was his purpose and intent, he certainly succeeded in his endeavor because this is December of 1949, and he is still here, this in spite of the fact that, unquestionably, he had no right to be in the United States at all. He came here illegally. The illegality of that entrance is res adjudicata because he pleaded guilty to such illegal entry, was sentenced and complied with the imprisonment requirements pronounced.

Under the law, immediately such imprisonment had been ended, he had no right to expect he would not be forthwith deported. Nevertheless he has continued to stay.

In due course he adopted the two former sons of his wife who before she married the petitioner chose to run whatever risk there was of living with

him. These two adopted sons are American citizens. In no way did they depend upon any apparent right of the petitioner to legally live in the United States. I am not presented with a question of where the authorities permitted him to come here, where a woman in good faith married him relying upon his apparent right to stay and where children were adopted having no reason to believe there was any question of his right to remain. I am presented with a question where the marrige and adoption were both made in the face of refusals to allow him to enter and adjudications that he had no right to stay, adjudications by Immigration authorities. And regardless of how sincere the adoption may have been, to allow them to overcome the plain legal principles involved would be again to create a hazardous precedent. It certainly would be taken advantage of in the future by those who pretended sincerity and had no real intent except strategy.

I cannot consider other than that when the defendant intentionally and wilfully entered the United States during the pendency of his appeal in violation of the Immigration authorities' decision appealed from that he abandoned the appeal. But even if such conduct on his part was not an abandonment of the appeal, he still has no legal right to remain. In any event he entered illegally. The law is plain that one who enters illegally has no right to a court decree saying that he can stay in defiance of the decisions of the Immigration authorities.

Further than that, he was convicted of an offense which provided for deportation after the sentence imposed was complied with. I am not overlooking the contention that the Immigration authorities had the right to exercise discretion as to ordering his deportation, based upon the contention that he was not a member of an organization advocating the overthrow by force and violence of the United States Government, or which circulated literature to such effect, all as more particularly and definitely set forth in the applicable statute.

I have heretofore read the record carefully and examined the various publications introduced in evidence. I am not able to say at all that the Immigration authorities, the Board of Special Inquiry and those appealed to did not have substantial evidence before them of such membership by the petitioner in such an organization so advocating overthrow of this government and so circulating such literature. While it can be argued by some persons that plain statements in the literature introduced in evidence are merely figures of speech, it is difficult for me to see how anyone can contend at least that the ordinary, normal individual does not have a right to say they mean what they say. Certainly the literature presented in evidence constitutes substantial evidence of the type of an organization and of the kind of literature involved even though I might have the academic view that some individuals have expressed that what is plainly said means something different. Certainly I have

no right to say that other individuals do not have the right to come to the conclusion that would ordinarily be expected of a reasonable and normal mind. Personally, I see no occasion to differ with the conclusion which the Immigration authorities came to with respect to the literature involved, but, as I have said before, even if I differed in conclusion as to such, that is a far cry from saying that the Immigration authorities had to disregard their conclusions and follow those that some judge later might express.

I have examined the file carefully from the standpoint of his membership in the organization. The Court has no duty to exclude evidence before the Immigration authorities where they comply with the rules of the hearing before such Immigration authorities merely because the evidence might not have been admitted under the different and more technical rules of a court of law. That principle has become a well recognized one in habeas corpus proceedings. There was substantial evidence which gave the Immigration authorities the right to decide as they did as to membership, and no subsequent judge or judges under the decisions as I read them have the right to substitute their judgment if it should happen that their judgment would have been different had they been exercising the function of a special board of inquiry or some higher official in the Immigration Department.

True, there were a number of witnesses who said that Mr. Anderson was a patriotic American and not a Communist. The striking thing in the record

is that no individual who admitted he either was a Communist or had ever been expressed the view that the petitioner had not been a member of the organization. In fact, every individual who said he was a Communist or ever had been and was therefore in a position to testify convincingly on the question, contradicted at least the testimony of the petitioner.

It is true that the picture painted strongly indicates that those in control of the Communist Party have long had the policy and design of making it extremely difficult to prove anyone was a member of that organization, and in this case it would seem that the true name of the member is the one name that is avoided.

There were some witnesses that undoubtedly the Board of Inquiry felt were sincere in this testimony who strongly vouched for the petitioner. Regardless of how much confidence the Board had in the sincerity of such witnesses, it was not compelled because of confidence in their sincerity to believe that the witnesses were not mistaken. Some of the witnesses who appeared for the petitioner may well have aroused considerable doubt in the Board of Inquiry as to their sincerity. It is unnecessary to name names, but there was more than one whose endorsement would by some persons be viewed as the deserved "kiss of death." I may say that I have a high regard for Senator Morgan, now deceased. I have no reason to believe that the Board of Inquiry did not share that high regard.

One of the persuasive arguments made is that Mr. Anderson could not possibly have been elected to the union position he held by the American members thereof who made up such an overwhelming proportion of those on the union rolls had he been a Communist. That persuasive argument loses much of its appeal when it is considered that one of the witnesses who appeared before the Immigration authorities after Attorney Beeler represented the petitioner stated that he while a Communist had been elected as an officer of that same union. It can only be considered that the members of the union were fooled as to this witness, and if they could be fooled as to his Communistic activities, it is not at all convincing that they might not be deceived as to those of the petitioner. I well recognize the contention that one of the original witness—I think Mr. Deskin, who testified as to Mr. Anderson's Communist Party membership later, as the petitioner's attorney argues, recanted. But the recantation, if it be denominated such, was one whose implication was still strongly against the petitioner. The petitioner, it must be remembered, has always contended he was never a member of the Communist Party. The recantation quite clearly was one that the witness was persuaded to make in an endeavor to show that he was not working against the interests of the working class, but in such so-called recantation he definitely and very obviously avoided saying that the petitioner had not been a member of the Communist Party

ever. He persisted in saying merely that there had come a time when, in his belief, the petitioner was not a member. The logical interpretation of that evidence which the Special Board of Inquiry and reviewing authorities had the right to consider was that the witness was still firmly convinced that the petitioner had been a member of the Communist Party, and, ergo, that the petitioner had falsely testified in denying such.

It will also be found in the record where one witness that petitioner's counsel claims was vague, interestingly avoided saying that the petitioner had not urged people to join the Communist Party under certain conditions by his shrewdly worded answer that under certain other and different conditions he had never heard the petitioner urge anyone to join.

Assuming that the Immigration Board had no right to doubt the sincerity of any of the witnesses presented by petitioner, although as I have said there are persons who would doubt some of them, still the Special Board of Inquiry certainly rightfully could have ascribed their sincerity as arising through the same mistake that the members of the union had made who had voted to union office the witness who testified in the proceedings here in the United States after the petitioner's unlawful entry, and who, according to his testimony, had been elected while a Communist.

I have considered the contention of the petitioner that the file breathes prejudice on the part of the Immigration authorities. As a matter of fact, the

entire record is very indicative that the Immigration authorities, viewed as a whole and including the reviewing boards, were trying to favor the petitioner as far as they could. Even in 1939 the decision that he could enter the United States for the purpose of resuming adulterous living in the United States was not one corroborative of the petitioner's contention. I recognize that they say the Supreme Court decision in Hansen vs. Haff 291 U.S. 559 requires that holding. In my reading of Hansen vs. Haff 291 U.S. 559, I find ample opportunity for any authority or authorities prejudiced against Mr. Anderson to have said that the facts involved were so different from those in Hansen vs. Haff as to justify affirmance of the Special Board of Inquiry's position on that point.

It seems to me that anyone calmly and dispassionately analyzing this entire record can only come to the view that if there has been any mistake, the mistake has been in allowing petitioner to remain so long in the United States in the face of the record and in view of the law laid down by a host of decisions.

I am not at all unsympathetic with the wife. I assume that regardless of whether or not she had thought it might help her husband's legal position that in any event she would have married the petitioner, once the Canadian divorce was secured. I have real sympathy for the two young men who, of course, in no event are to blame, and I am assuming that the adoption was sincere as to each and would have occurred had there been no such pro-

ceedings as have been pending. But I have no right to overlook the consequences of using a marriage while an individual is under fire or adoptions when an individual has been ordered deported. To permit such to set aside the established law would be to solicit such marriages and adoptions by those having no design except to take advantage of the human feelings of Immigration authorities and of courts.

What I have said today has not been intended to be and has not been a legal exposition, but I think what I have said today makes clear why I must follow the law and legal principles which have been established so long and so plainly.

The petition is dismissed.

Certificate

I, James R. Royse, do hereby certify that I am official court reporter for the above-entitled Court, and as such was in attendance upon the hearing of the foregoing matter.

I further certify that the above transcript is a true and correct record of the matters as therein set forth.

/s/ JAMES R. ROYSE,
Official Court Reporter.

June 22, 1950

Black, J.

Appearances:

EDWARDS E. MERGES,
Attorney-at-law, for and on behalf of Petitioner.

JOHN E. BELCHER,
Assistant United States attorney, for and on behalf of Respondent.

The Court: The Court heretofore on November 4, 1949, after careful consideration of all the records, exhibits, evidence and issues involved, announced that the petition for a writ of habeas corpus was denied, at which time counsel were advised that later some of the reasons which appealed to the Court as supporting such decision would be stated. On December 14, 1949, in pursuance of such advice of November 4, 1949, the Court rendered its oral opinion.

After findings of fact, conclusions of law and decree were presented for entry and while the Court was considering certain proposed changes as to the findings of fact, the petitioner on March 17, 1950, and after the decision of February 20, 1950, of the United States Supreme Court in Wong Yang Sung vs. McGrath, 339 U.S. 33, filed a motion asking the Court for a reconsideration of the entire record and for the granting of the writ of habeas corpus notwithstanding such oral decision of the

Court. Respective counsel were accorded full opportunity to and did argue every phase of the entire matter from the inception as they desired.

While counsel for petitioner in connection with such motion filed March 17, 1950, strongly insisted that the Administrative Procedure Act of June 11, 1946, 5 U.S.C.A. Sec. 1001 et seq, had not been complied with as to petitioner and urged that under such Act petitioner was entitled to the writ prayed for, it should be noted that never prior to March 17, 1950, had petitioner or counsel for petitioner in any way argued or even indicated that said Act was in the slightest degree or at all applicable to the proceedings involving him.

This Court, notwithstanding the lateness of petitioner's suggestion, again carefully examined the entire record, files, exhibits and evidence with respect to whether or not the Administrative Procedure Act related thereto in whole, as claimed by petitioner, or at all.

After such careful consideration and reexamination of every aspect of the matter the Court is still of the opinion that the previously announced denial was correct.

Petitioner since such tardy suggestion has argued that all the many hearings held between 1939 and 1945 before the Administrative Procedure Act was ever enacted, as well as long before any effective date of that Act, which as to appointment of Examiner was June 11, 1947, Section 1011, should be set aside because not in compliance with an Act that did not then exist.

Plainly the Act does not apply to the hearings had before its enactment. No hearings were had after it was passed. And it does not appear that the petitioner would have had any rights under the Act as to anything since its enactment that he was not afforded. But even if he would have been entitled to some technical right under the Act after its enactment had he or his counsel timely asked the Immigration authorities for such, he should not now be able to successfully complain.

To approve the position of counsel for petitioner beginning in March, 1950, would establish a precedent hazardous in the extreme.

This Administrative Procedure Act because of the subsequent time of its enactment, because of the subsequent effective date therein stated, and because of the specific language of the Act, did not apply to the proceedings before the Immigration authorities as to this petitioner. Aside from that petitioner, represented all the while by experienced counsel, waived any right to object to the procedure followed.

I can find no basis, either legally or equitably, for the issuance of the writ of habeas corpus sought. Every suggested sentimental ground for granting relief to him is based upon an occurrence happening after the Immigration authorities had declared their opposition to his reentry into the United States and would be a solicitation to others to insincerely copy his course as a helpful strategy.

For reasons, among others, orally stated by me on December 14, 1949, I am satisfied and find that

the Immigration authorities were acting within the scope of their powers, that they were neither arbitrary nor capricious nor acting in abuse of their discretion, and that the evidence presented to them was ample to justify the conclusions they reached.

Moreover, based on the record and under the law, I am further satisfied and further find that their actions, findings and conclusions were not contrary to the law or the Constitution; that they were supported by substantial evidence and moreover were supported by the facts to the extent that the facts were or are subject to trial de novo by any reviewing court. And, finally, I find that there was no prejudicial error. If there was any error on the part of the Immigration authorities, such favored petitioner and in no wise constituted prejudicial error. It must be remembered that he wilfully and unlawfully entered the United States early in 1940 and that he is still here and at liberty in spite of the efforts of the Immigration authorities to return him to the country from whence he unlawfully came so many years ago.

His conviction for wilful illegal entry established beyond all reasonable doubt that his entry then was wilful and illegal.

Such is res judicata between the government and the petitioner. Having come to this country wilfully and unlawfully over ten years ago, he has therefore never since had a lawful right to remain here. I have no legal or conscientious ground to interfere with the decision of the Immigration authorities that he should be deported.

Neither the recent Supreme Court decision of Wong Yang Sung vs. McGrath, 339 U.S. 33, supra, and 339 U.S. 908 per curriam modification, nor the per curiam decision of April 24, 1950, in the cause of Yanish et al. vs. Barber, etc. (9th Circuit) 181 Federal 2d 492, apply to petitioner's situation under the record here involved.

The distinctions between them and the instant case are definite and clear. In each of them, contrasted with the situation here, the hearings before the Immigration authorities in question were long after the effective date of the Administrative Procedure Act. In each of them, contrasted with the situation here, the one sought to be deported made timely and appropriate demand for compliance with the Act. See Wong Yang Sung cases, 80 Fed. Supp. 235 and 174 Fed. 2d 158, and Judge Harris' opinion in the Yanish case, 81 Fed. Supp. 499, and 86 Fed. Supp. 461 (Yanish case—Judge Erskine) for matters preceding the decision of Judge Harris. And in each of them, contrasted with the situation here, there was apparently lawful entry.

Such motion is overruled and such petition of William Ewald Anderson is, of course, again denied.

Certificate

I, K. M. Treadwell, do hereby certify that I was official court reporter pro tempore for the above-entitled Court, and as such was in attendance upon the hearing of the foregoing matter.

I further certify that the above transcript is a

true and correct record of the matters as therein set forth.

/s/ K. M. TREADWELL,
Reporter pro tempore.

[Endorsed]: Filed September 29, 1950.

[Title of District Court and Cause.]

CERTIFICATE OF CLERK, U. S. DISTRICT COURT TO RECORD ON APPEAL

United States of America,
Western District of Washington—ss.

I, Millard P. Thomas, Clerk of the United States District Court for the Western District of Washington, do hereby certify that pursuant to the provisions of Subdivision 1 of Rule 11 as Amended of the United States Court of Appeals for the Ninth Circuit, and Rule 75(o) of the Federal Rules of Civil Procedure, and designation of counsel for appellant, I am transmitting herewith all the original papers in the file dealing with the above-entitled action, including the Court Reporter's Transcript of Proceedings, and certified record of the Department of Justice relating to the deportation proceedings against the Petitioner William Ewald Anderson and the original warrant of arrest and the original warrant of deportation as attached to and made a part of Respondent's answer to Show Cause filed October 1, 1948; and the original Judgment, Sentence and Commitment, Indictment and

Verdict in Criminal Cause No. 45571 entitled United States of America vs. William Ewald Anderson admitted in evidence at the Show Cause hearing; and that the same constitute the complete record on file in said cause. The papers herewith transmitted constitute the record on appeal from the Conclusions of Law and final Judgment by the Court filed on July 27, 1950, to the United States Court of Appeals at San Francisco, California, and are identified as follows:

1. Petition for Writ of Habeas Corpus, filed Sept. 1, 1948.

2. Amended Petition for Writ of Habeas Corpus, filed Sept. 7, 1948.

3. Order to Show Cause, filed Sept. 7, 1948.

4. Answer to Order to Show Cause, filed Oct. 1, 1948.

5. Stipulation, filed Oct. 1, 1948.

6. Respondent's Memorandum, filed Nov. 8, 1948.

7. Stipulation, filed Jan. 14, 1949.

8. Stipulation, filed March 3, 1949.

9. Brief on Behalf of Petitioner, filed July 18, 1949.

10. Order, filed July 21, 1949.

11. Motion for Order Granting Writ of Habeas Corpus Notwithstanding the Oral Decision of the Court, filed March 17, 1950.

12. Government's Supplemental Memorandum, filed April 3, 1950.

13. Petitioner's Answer to Government's Supplemental Memorandum, filed April 7, 1950.

14. Petitioner's Second Memorandum on Motion for Judgment Notwithstanding the Oral Decision of the Court, filed June 19, 1950.

15. Court's Oral Decision, filed June 23, 1950.

16. Findings of Fact and Conclusions of Law, filed July 27, 1950.

17. Judgment, filed July 27, 1950.

18. Notice of Appeal, filed Sept. 18, 1950.

19. Costs on Appeal Bond, filed Sept. 18, 1950.

20. Petitioner's Statement of Points on Appeal, filed Sept. 18, 1950.

21. Designation of Record, filed Sept. 18, 1950.

22. Stipulation and Order Transferring Exhibits, filed Sept. 18, 1950.

23. Order, filed Sept. 18, 1950.

24. Court Reporter's Transcript of Proceedings, filed Sept. 29, 1950.

I further certify that the following is a true and correct statement of all expenses, costs, fees and charges incurred in my office for preparation of the record on appeal in this cause, to wit:

Petitioner's Notice of Appeal, $5.00, and that said

amount has been paid by the Attorney for the Appellant.

In Witness Whereof I have hereto set my hand and affixed the official seal of said District Court at Seattle, this 17th day of October, 1950.

MILLARD P. THOMAS,
Clerk.

[Seal] /s/ TRUMAN EGGER,
Chief Deputy.

The exhibits referred to herein above are further described as follows:

1. File No. 4670293, Volumes I, II, IV and VI.

2. Board of Special Inquiry Exhibits marked:
   Exhibit "L"—State and Revolution, by V. I. Lenin,
   Exhibit "M"—Political Education the Communist Party,
   Exhibit "N"—What Is Communism, by Earl Browder,
   Exhibit "O"—The Communist Manifesto, by Karl Marx and Friedrich Engels,
   Exhibit "P"—Program of the Communist International.

3. Original Judgment, Sentence and Commitment, Verdict and Indictment in Criminal Cause No. 45571 entitled United States of America vs. William Ewald Anderson.

[Endorsed]: No. 12718. United States Court of Appeals for the Ninth Circuit. William Ewald Anderson, Appellant, vs. John P. Boyd, District Director, Immigration and Naturalization Service, for the Seattle District, Appellee. Transcript of Record. Appeal from the United States District Court for the Western District of Washington, Northern Division.

Filed October 20, 1950.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for the Ninth Circuit.

United States Circuit Court of Appeals
for the Ninth Circuit

No. 12718

In the Matter of

WILLIAM EWALD ANDERSON for a Writ of Habeas Corpus.

STATEMENT OF POINTS ON APPEAL

Comes Now the appellant, William Ewald Anderson, and formally adopts the statement of points on appeal heretofore filed in the District Court which are as follows:

The District Court Erred in:

1. In making its oral decision on November 4, 1949, denying the petitioner's petition for Writ of Habeas Corpus.

2. In reaffirming such oral decision of November 4, 1949, by subsequent oral decision on December 14, 1949.

3. In making its oral decisions of November 4, 1949, and December 14, 1949, without granting counsel for the petitioner an opportunity to present oral argument.

4. In making its oral decision of June 22, 1940, denying the petitioner's motion for reconsideration and reaffirming its prior oral decisions of November 4, 1949, and December 14, 1949.

5. In holding that compliance with the Administrative Procedures Act of June 11, 1946, by the Immigration Authorities, with regard to proceedings taken by them in a petitioner's case after its enactment was and is not required under the holding of the Supreme Court of the United States in the case of Wong Yang Sung v. McGrath, 339 U. S. 33.

6. In holding that the Immigration Authorities did not abuse their discretion in ordering the petitioner deported and that their decision in so ordering him deported was supported by substantial evidence.

7. In holding that the Court's scope of review in deportation cases was not broadened by Wong Yang Sung case supra.

8. In holding that the decision of the Circuit Court of Appeals for the Ninth Circuit in the case

of Yanish, et al. v. Barber, etc. (9 Cir.) 181 F. 2d 492, was not applicable to the instant case.

9. In making and entering paragraphs I to III, inclusive, of its Conclusions of Law.

10. In making and entering its Judgment herein, denying the petitioner's application for Writ of Habeas Corpus as prayed for and in discharging the petitioner's rule to show cause on July 27, 1950.

Dated this 25th day of October, 1950.

/s/ EDWARDS E. MERGES,
Attorney for Appellant.

Service accepted this 26th day of October, 1950.

/s/ JOHN E. BELCHER,
Asst. United States Attorney.

[Endorsed]: Filed October 30, 1950.

[Title of Court of Appeals and Cause.]

STIPULATION FOR CONSIDERATION OF IMMIGRATION EXHIBITS WITHOUT PRINTING

It Is Hereby Agreed and Stipulated by and between John E. Belcher, Assistant United States Attorney, and Edwards E. Merges, attorney for appellant herein, that the Immigration records and exhibits in the above-entitled cause may be considered in their original form without the necessity of printing or reproduction.

Dated at Seattle, Washington, this 25th day of October, 1950.

/s/ JOHN E. BELCHER,
Asst. United States Attorney.

/s/ EDWARDS E. MERGES,
Attorney for Appellant.

Service accepted this 26th day of October, 1950.

/s/ JOHN E. BELCHER,
Asst. United States Attorney.

So Ordered:

/s/ WILLIAM DENMAN,

/s/ H. T. BONE,

/s/ WALTER L. POPE,
Judges U. S. Court of Appeals
for the Ninth Circuit.

[Endorsed]: Filed October 30, 1950.